83-1386

No.

FILED
FEB 21 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue in the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

41

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTIONS PRESENTED

1. Whether and under what circumstances, if any, the judicial power of the United States extends to the levying of taxes for the purpose of implementing remedies for constitutional violations?

2. Whether 28 U.S.C. §1341 affects the remedial powers of the federal courts?

3. Whether a district court, notwithstanding 28 U.S.C. §1341 and established principles of comity and federalism, can enjoin reductions in local property taxes and assume continuing jurisdiction over local property tax rates in a political subdivision to fund a settlement or a remedy of a claimed constitutional violation?

4. Whether a district court, in enforcing a settlement or remedy in an interdistrict school desegregation case, can enjoin the statutory reduction of school property taxes in a single school district, where the property tax reduction is offset by sales tax revenue distributed to the school district, in the absence of any evidence or findings that the operation of the state tax law impeded or will impede desegregation in the school district?

5. Whether, on appeal from an order approving a settlement agreement in an interdistrict school desegregation case under Rule 23(e), F.R.Civ.P., a court of appeals may properly supply findings necessary to convert the interdistrict settlement into an intradistrict remedy, and leave in effect an injunction forbidding a school property tax reduction, notwithstanding the appellate court's conclusion that the record did not support many aspects of the settlement, considered as a remedy, and the conclusion that the injunction was entered without the necessary legal or factual predicate?

PARTIES

The parties to the proceedings below are as follows:

The City of St. Louis, Missouri, a constitutional charter city under the law of Missouri, plaintiff-intervenor below;

Hon. Paul M. Berra, Comptroller of the City of St. Louis and voter and taxpayer; petitioner in Court of Appeals, not a party in district court;

Hon. Ronald A. Leggett, Collector of Revenue in the City of St. Louis and voter and taxpayer; petitioner in Court of Appeals; added as a party in district court on January 10, 1984;

Hon. William L. Hungate, United States District Judge for the Eastern District of Missouri, as presiding judge in the proceedings in district court, was respondent in proceedings in prohibition in the Court of Appeals;

Craton Liddell, a minor by Minnie Liddell, his mother and next friend, and Minnie Liddell; Joanna Goldsby, a minor by Barbara Goldsby, her mother and next friend, and Barbara Goldsby; Deborah Yarber, a minor, by Samuel Yarber, her father and next friend and Samuel Yarber; Natalie Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore; Rochelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand; on behalf of themselves and all other school age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri;

Earline Caldwell, Lillie Caldwell, Dwayne Daniels, Gwendolyn Daniels, Stephanie Williams, Gloria Williams, Robert Smith, and the National Association for the Advancement of Colored People, as representatives of a class of students and parents now attending or who will attend public primary and secondary schools located in St. Louis City and County;

Board of Education of the City of St. Louis, State of Missouri, Julius Dix, David Mahan, Anne Price, and Rufus Young, Jr. (Area Superintendents); Penelope Alcott (President), Nathaniel Johnson, Lawrence E. Nicholson, Daniel Schesch, Dorothy C. Springer, Joyce M Thomas, Raymond Decker, Richard K. Gaines, Roy B. Gillyon, John P. Mahoney, Marjorie R. Smith, Michael K. Sheehan (Members of the School Board); Jerome Jones (Superintendent of Schools), all in their official capacities;

St. Louis County, Gene McNary, County Executive, Harlow Richardson, County Treasurer, George C. Leachman, Collector of St. Louis County Contract Account,

Affton Board of Education, Bayless Board of Education, Brentwood Board of Education, Clayton Board of Education, Ferguson-Florissant Reorganized R-2 Board of Education, Hancock Place Board of Education, Hazelwood Board of Education, Jennings Board of Education, Kirkwood Board of Education, Ladue Board of Education, Lindbergh Board of Education, Maplewood-Richmond Heights Board of Education, Mehlville Board of Education, Normandy Board of Education, Parkway Board of Education, Pattonville Board of Education, Ritenour Board of Education, University City Board of Education, Webster Groves Board of Education and Wellston Board of Education,

State of Missouri; Arthur Mallory, Commissioner of Education of the State of Missouri, in his official capacity; Christopher S. Bond, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; Melvin E. Carnahan, Treasurer of the State of Missouri; Stephen C. Bradford, Commissioner of Administration of the State of Missouri; The State of Missouri Board of Education and its members Erwin A. Williamson (President), Jimmy Robertson (Vice-President), Grover A. Gamm, Delmar A. Cobble, Dale M. Thompson, Donald W. Shelton and Robert Welling.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties	ii
Table of Contents	v
Table of Authorities	vi
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Petition for Writ of Certiorari	8
I. The petition ought to be granted because fundamental constitutional questions of imperative national importance concerning the judicial power of the United States are presented, in that the courts below have exceeded or usurped judicial power by seeking to increase or otherwise control school property tax rates pursuant to a settlement agreement in an interdistrict school desegregation case	8
II. The petition ought to be granted because the decision of the court of appeals is in direct conflict with controlling decisions of this Court and decisions of other courts of appeals	21
III. The petition ought to be granted because the decision of the court of appeals, by refusing to overturn an admittedly erroneous injunction inflic-	

ting higher school taxes on the people of the City of St. Louis, and by attempting to convert a settlement agreement into a remedy by providing findings not supplied by the district court, is such a departure from the usual course of judicial procedure as to require exercise of this Court's powers of supervision 26

Conclusion 30

TABLE OF AUTHORITIES

Cases

Baker v. Carr, 369 U.S. 186 (1962) 14

City of Catlettsburg v. Davis' Adm'r., 262 Ky. 726, 91 S.W.2d 56 (1936) 11

Commonwealth of Virginia v. State of West Virginia, 246 U.S. 565 (1918) 14, 20

DeBeers Consol. Mines v. United States, 325 U.S. 212 (1945) 3, 25

Elrod v. Burns, 427 U.S. 347 (1976)..... 14

Evans v. Buchanan, 582 F.2d 730 (3d Cir. 1978), cert. denied sub nom. Delaware State Bd. of Education v. Evans, 446 U.S. 923 (1980).....11, 17, 23, 25, 29

Ex parte Republic of Peru, 318 U.S. 578 (1943)..... 25

Fair Assessment in Real Estate v. McNary, 454 U.S. 100 (1981)..... 20

Green v. Frazier, 253 U.S. 233 (1920) 14

Griffin v. Board of Supervisors of Prince Edward County, 339 F.2d 486 (4th Cir. 1964) 10, 23

Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964) 10

Heine v. The Levee Commissioners, 86 U.S. (19 Wall.) 655 (1874) 17

Immigration & Naturalization Service v. Chadha, 103 S.Ct. 2764 (1983) 14

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Ohio 1971), aff'd, 456 F.2d 854 (6th Cir. 1972) 14

Katzenbach v. Morgan, 384 U.S. 641 (1966) 15

Liddell v. Bd. of Education, 469 F.Supp. 1304 (E.D. Mo. 1979), rev'd sub nom. Adams v. United States, 620 F.2d 1277 (8th Cir. en banc), cert. denied, 449 U.S. 826 (1980), on remand, 491 F.Supp. 351 (E.D.Mo. 1980), aff'd, 667 F.2d 643 (8th Cir.), cert. denied, 451 U.S. 902 (1981), appeal after remand, 677 F.2d 626 (8th Cir.), cert. denied, 103 S.Ct. 172 (1982) 2

Loan Association v. Topeka, 87 U.S. (20 Wall.) 655 (1874) 12, 16

Louisiana ex rel. Hubert v. Mayor & Council of New Orleans, 215 U.S. 170 (1915) 12

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819) . 20

Meriwether v. Garrett, 102 U.S. 472 (1880) 14, 23

Milliken v. Bradley I, 418 U.S. 717 (1974) 18

Milliken v. Bradley II, 433 U.S. 267 (1977) 17, 19, 27

Oliver v. Kalamazoo Board of Education, 640 F.2d 782 (6th Cir. 1980) 24, 28

Olmstead v. United States, 277 U.S. 438 (1928) 16

Palmer v. Thompson, 403 U.S. 217 (1971) 10

Plaquemines Parish School Bd. v. United States, 415 F.2d 817 (5th Cir. 1969) 15, 23

Pullman-Standard v. Swint, 456 U.S. 273 (1982) 21, 27

Rees v. City of Watertown, 86 U.S. (19 Wall.) 107 (1874) 12

San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) 17, 18, 20, 23

Schlagenhauf v. Holder, 379 U.S. 104 (1964) 25

State ex rel. Emerson v. City of Mound City, 335 Mo. 702, 73 S.W.2d 1017 (banc 1934) 11

State of Virginia v. Commonwealth of West Virginia, 246 U.S. 656 (1918) 15

The Five Knights' Case, 3 Howell S.T. 51 (1627) 12

The Question of Ship Money, 3 Howell S.T. 843 (1637) . 12

Town of Flagstaff v. Gomez, 29 Ariz. 481, 242 P. 1003 (1926) 11

United States v. County of Clark, 95 U.S. (5 Otto) 769 (1877) 12

United States v. County of Macon, 99 U.S. 582 (1873) .. 12

United States v. Missouri, 515 F.2d 1365 (8th Cir.), cert. denied, sub nom. Ferguson Reorg. School Dist. v. United States, 423 U.S. 951 (1975) 10, 11

United States v. Scotland Neck City Bd. of Education, 407 U.S. 484 (1972) 22

Welsch v. Likins, 550 F.2d 1122 (8th Cir. 1977) 20

Wright v. Council of City of Emporia, 407 U.S. 451 (1971) 20, 22

Constitutions, Statutes and Rules:

U.S. Const., art. I, §8 13

U.S. Const., amend. IX 15, 16, 17, 30

U.S. Const., amend. XIV 15, 30

Mo. Const. art. X, §2 15

Mo. Const. art. X, §11 ..... 5, 15

Mo. Const. art. X, §§16-22 ..... 5, 15

28 U.S.C. §1254(1) 2

28 U.S.C. §1341 ..... i, 6, 17, 19, 21, 25, 29

28 U.S.C. §1651(a) 2

Supreme Court Rule 17 26

Rule 21 F.R.A.P. 26

Rule 23(e), F.R.Civ.P. ..... i, 3, 18

Rule 35, F.R.Civ.P. 25

Rule 52, F.R.Civ.P. 27

Mo. Rev. Stat. §139.031 (Supp. 1983) 5

Mo. Rev. Stat. §148.660, .670 (Supp. 1983) 6

Mo. Rev. Stat. Ch. 163 (1978) 5

Mo. Rev. Stat. §164.013 (Supp. 1983) 22

Other authorities:

Bill of Rights, 1 Wm. & Mary, st. 2, c.2 (1689) 12

Magna Carta, §§12, 14 (1215)..... 12

1 Sources of English Constitutional History 117-18 (Stephenson & Marcham ed., 1972) 12

The Federalist, No. 47, p. 324 (Cooke ed. 1961) 30

The Federalist, No. 78, pp. 522-23 (Cooke ed. 1961).... 13

Frug, The Judicial Power of the Purse; 126 U.Pa.L.Rev. 715 (1978) 13

Eisenberg & Yeazell, The Ordinary and Extraordinary in Institutional Litigation, 93 Harv.L.Rev. 465 (1980) 13

Nagel, Separation of Powers and the Scope of Federal Equitable Remedies, 30 Stan.L.Rev. 661 (1978) 13

Comment, Enforcement of Judicial Financing Orders, 59 Geo.L.J. 393 (1970) 13

Cong. Globe, 39th Cong., 1st Sess., 6, 806, 1033, 2444ff., 2459ff., App. 217ff 15

32 U.S.L.W. 3216 (1963)..... 10

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT, etc., et al.,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Come now the Honorable Ronald A. Leggett, Collector of Revenue in the City of St. Louis, the Honorable Paul M. Berra, Comptroller of the City of St. Louis, voters and school property taxpayers therein, and the City of St. Louis, a constitutional charter city of the State of Missouri, and respectfully pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on February 8, 1984, in this case.

OPINIONS BELOW

The order and opinion of the district court giving rise to this petition is reported at 567 F.Supp. 1037, and is reprinted in Appendix A. The opinion and order of the United States Court of Appeals for the Eighth Circuit, en banc, denying petitioners' application for a writ of prohibition in that Court, and substantially affirming the district court, was entered on February 8, 1984, and is not officially reported, but is reprinted in Appendix K (the opinion of the Court of Appeals is printed last, owing to the time of receipt and of filing the instant petition in this Court). A preliminary order of the Court of Appeals, staying

parts of the district court's order of July 5, 1983, is reported at 717 F.2d 1180, and is reprinted in Appendix I. Relevant prior opinions of the District Court and the Court of Appeals in the underlying case are reprinted in Appendix G, and are reported at 620 F.2d 1277 (8th Cir. en banc), cert. denied, 449 U.S. 826 (1980), on remand, 491 F.Supp. 351 (E.D.Mo. 1980), aff'd, 667 F.2d 643 (8th Cir.), cert. denied, 451 U.S. 902 (1981), appeal after remand, 677 F.2d 626 (8th Cir.), cert. denied, 103 S.Ct. 172 (1982). See also 546 F.2d 768 (8th Cir. 1976), cert. denied, 433 U.S. 914 (1977); 693 F.2d 721 (8th Cir. 1981).

JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254(1). The judgment of the Court of Appeals was entered on February 8, 1984; no rehearing was sought by petitioners. This petition is filed within 90 days after entry of the judgment of the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The federal and state constitutional and statutory provisions germane to this petition are set forth in Appendix H. In addition, 28 U.S.C. §1651(a) provides:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

The instant case originated as an intradistrict school desegregation case in 1972, and a summary of the proceedings through July 5, 1983 is included in the district court's opinion, see Appendix A, pp. A41-A48. In August, 1981, various motions were granted whereby additional parties defendant were added and interdistrict claims were asserted. See Appendix A,

pp. A42-A43; Appendix F, *passim.;* see also Appendix G, 677 F.2d 626.

In February, 1983, at the time that trial as to certain interdistrict defendants on the interdistrict claims was to commence in the district court, that court was told that the possibility of settlement existed, and granted a delay to permit further negotiations. Eventually, an "agreement in principle," delineating general terms of a settlement of all interdistrict school desegregation claims in the case, was filed. See Appendix A, pp. A46-A47; Appendix C, p. A55. Further time was allowed to develop a detailed implementation plan, which was duly filed on March 24, 1983, and is hereinafter described as the "settlement agreement" or "settlement plan." See Appendix C. The United States and the City of St. Louis, intervenor plaintiffs who had been excluded from negotiations, and the State of Missouri refused to subscribe to either the "agreement in principle" or the final settlement agreement. Appendix A, pp. A10-A11, A47. Among the provisions of the settlement agreement were the following:

> ...the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be ordered by the Court,...
>
> * * *
>
> The fulfillment of the obligations of the parties is contingent upon an Order by the Court which establishes adequate funding for the obligations of the parties, consistent with the Agreement in Principle and this Settlement Agreement.
>
> * * *

Appendix C, pp. A55, A125, A127.

The district court, acting pursuant to Rule 23(e), F.R.Civ.P., promptly scheduled a fairness hearing, to determine if the proposed settlement could be approved as fair, reasonable and ade-

quate to the plaintiff classes. Appendix A, p. A47. At the fairness hearing, substantial evidence was adduced concerning the cost of the proposed settlement, and the manner in which the State and the taxpayers of the City of St. Louis would be expected to pay those costs. At the time of the fairness hearing, the estimated costs of the "Quality Education" provision of the settlement were placed at over $800,000,000. See Appendix D, pp. A147-A148, A169; Appendix C, pp. A86-A103. (Subsequently, the district court conducted a "budget hearing" and approved expenditure of approximately $46,000,000 to fund parts of the settlement in the first year of operation. See Appendix J, pp. A392-A393; Appendix K, p. A475). Witnesses for the St. Louis Board of Education (an interdistrict plaintiff) testified at the fairness hearing that annual applications for funds would be made to the district court, despite the fact that the Board's annual revenues exceed $180,000,000. Appendix D, pp. A148-A149, A170. The evidence also revealed that tax increases in the City of St. Louis of the magnitude required to fund any substantial portion of the settlement cost would directly affect the City government's ability to raise revenue for its own purposes and would harm the City's economy generally. *Id.*, pp. A152-A155, A157-A159.

After receiving a report from an appointed financial advisor, see Appendix A, pp. A25-A26, the district court entered an order on July 5, 1983, which approved the settlement agreement pursuant to Rule 23(e), F.R.Civ.P., and assumed control of the school property tax rates in the City of St. Louis. See Appendix A, pp. A1, A4, A13, A33. In particular, the district court enjoined the School Board from reducing its property tax rate in 1983 as required by a recently enacted state sales tax law, see Appendix K, pp. A448-A449, allocated various expenses of the settlement agreement between the State of Missouri and the St. Louis Board of Education, ordered the Board to submit a bond issue to the voters of the City before February 1, 1984, and directed the Board to certify to the court "the amount needed to meet its share of the costs of the Settlement Plan and the tax rate necessary to fund these costs along with its other obliga-

tions." Appendix A, pp. A3-A4, A34-A35, A38. The Board initially reported to the Court that it would require a property tax increase of $.86 per hundred dollars of assessed valuation to fund its share of the costs of the settlement. See Appendix E. After the filing of the district court's budget order, the School Board reported that it would require a somewhat smaller property tax increase; the opinion of the Court of Appeals, reversing parts of the district court's budget order leaves the cost of the settlement agreement in doubt. See Appendix K, pp. A407-A408a.

In the tax collection process in the City of St. Louis, the Comptroller of the City must certify all tax rates for inclusion on tax bills, which are prepared by the City's assessor.[1] The Collector of Revenue, an independent elected county official not part of the City government, must collect all taxes appearing on real and personal property tax bills and defends against all taxpayer protest actions and suits to enjoin collection. See Mo. Rev. Stat. §139.031 (Supp. 1983); see also Appendix D, p. A151.

As property taxpayers, petitioners Leggett and Berra were deprived in fact of a property tax reduction of some $.42 per hundred dollars[2] of assessed valuation by the orders of the

---

[1] The City Board is an autonomous political subdivision, governed by an elected board of education, Mo. Rev. Stat. §162.571 (1978). Like all Missouri school districts, it is funded by a combination of state and federal assistance and local property taxes. See Mo. Rev. Stat. Ch. 163 (1978); Appendix D, p. A170. The local property taxes of school districts in Missouri are limited by Mo. Const. art. X, §§11(b) and (c), and §§16-22 (1980); see Appendix H. The St. Louis school district is geographically coterminous with the City of St. Louis, but the City government is distinct; the Collector of Revenue collects taxes levied by the City School Board, as well as property taxes of all other taxing jurisdictions in the City.

[2] The district judge thought he was preventing a rate reduction of $.58/$100, see Appendix A, p. A36, but later information indicates that the reduction would have been $.42/$100.

district court, and faced the future prospect of having to pay additional judicial taxes included on the tax bills, or face personal liability or loss of real property. As voters in the City of St. Louis, petitioners Leggett and Berra were stripped of their right to vote on any increases in the School Board's tax rate. See Appendix H, pp. A346-A347. Consequently, these petitioners (who were not parties in the district court) joined with the City of St. Louis in seeking a writ of prohibition in the Court of Appeals for the Eighth Circuit, citing *inter alia,* 28 U.S.C. §1341, to prevent the district judge from enforcing his order enjoining reduction of the School Board's tax rate and from taking further action to enforce the settlement agreement by orders affecting the tax rate in the City of St. Louis. The City of St. Louis, as plaintiff-intervenor in the district court, also filed an appeal from the district court's order, since it stood to lose part of distributions of certain statewide taxes if the School Board's property tax rate increased, see Mo. Rev. Stat. §§148.660, .670 (Supp. 1983).

The United States Court of Appeals for the Eighth Circuit, en banc, heard oral argument on applications for stays of the district court's order of July 5, and on the petition for writ of prohibition, in September, 1983. On September 13, 1983, the court of appeals refused to rule on the petition for writ of prohibition, but partially stayed the district court's order. See Appendix I. Without articulating any reasons, other than the press of time, see Appendix I, pp. A355, the court of appeals did not disturb the district court's injunction against the school tax reduction in the City of St. Louis, pending consideration of the appeals.

On February 8, 1984, the court of appeals denied petitioners' writ of prohibition, and largely affirmed the order of the district court. See Appendix K. In the process, the court of appeals substantially rewrote the settlement agreement approved by the district court, deleting many portions that the court of appeals did not deem to be proper remedies based on the record before it, and (apparently) reducing the cost of implementation of the

agreement.[3] In the course of revising the settlement, evidently to "preserve its constitutionality," Appendix K, p. A408a, the court of appeals substituted its own findings of fact for those of the district court, or supplied findings omitted by the district court altogether. The court of appeals explicitly upheld that part of the settlement calling for court-ordered taxation, holding that "the district court's broad equitable powers to remedy the evils of segregation include a narrowly defined power to order increases in local tax levies on real estate." *Id.*, p. A449. However, the court held that such action was appropriate only after a showing of need by the School Board and a showing of exhaustion of all other alternatives. *Id.*, pp.A455-A456. Since neither condition was satisfied on the record before it, the court of appeals held that the July 5 order enjoining a school tax reduction in the City of St. Louis in 1983 was erroneous. *Id.*, p. A455. Notwithstanding the absence of any legal or factual predicate for the district court's order, the court of appeals refused to reverse it, or prohibit its enforcement, relying on vague "equitable considerations" involving potential "disruption" of school finance in the City of St. Louis. *Id.*, p. A449. The court of appeals also set forth a detailed program to be followed by the district court in increasing property taxes in the future. *Id.*, pp. A455-A456. The court of appeals gave no consideration to the harm or disruption which the district court's order occasioned to the taxpayers of the City or to state laws governing tax collection and protest.

In the interim between the order of the district court and the opinion of the court of appeals, school property tax collections in the City proceeded in accordance with the district court's

---

[3] The court of appeals ordered the parties to signify promptly their acceptance of the settlement as revised. Petitioners are informed and believe that the parties to the settlement will accede to the appellate revisions. However, part of the district court's order, which enjoined a school tax reduction in 1983 in the City of St. Louis, would remain in force under the court of appeals' mandate, even if the settlement otherwise falls. See Appendix K, pp. A408a, A449.

order. However, petitioner Leggett, despite lack of explicit authorization from the court of appeals, see Appendix I, sought to hold the excess school tax collected in a special escrow account. As a result, he was joined as a party by the district court on January 10, 1984, and ordered to show cause why he should not be held in contempt. Appendix J, pp. A363-A370. The funds collected by reason of the admittedly erroneous order of the district court seemingly are required to be paid over to the St. Louis School Board by the opinion of the court of appeals. Certiorari now is sought from this Court.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. THE PETITION OUGHT TO BE GRANTED BECAUSE FUNDAMENTAL CONSTITUTIONAL QUESTIONS OF IMPERATIVE NATIONAL IMPORTANCE ARE PRESENTED CONCERNING THE SCOPE OF THE JUDICIAL POWER OF THE UNITED STATES, IN THAT THE COURTS BELOW HAVE EXCEEDED OR USURPED JUDICIAL POWER BY SEEKING TO INCREASE OR OTHERWISE CONTROL PROPERTY TAXES IN ORDER TO ENFORCE A SETTLEMENT AGREEMENT IN AN INTERDISTRICT SCHOOL DESEGREGATION CASE, UNDER THE GUISE OF REMEDYING AN INTRADISTRICT CONSTITUTIONAL VIOLATION.

A. The actions of the lower courts patently violate the doctrine of separation of powers and infringe the rights of the people reserved by the Ninth Amendment.

Citing Mark Twain and John Gunther, see Appendix A, pp. A37, A48-A50, the district court has purported to launch one of "the most creative social experiments of our time." *Id.*, p. A12. In the process, the court held that it had the authority to increase school property taxes in the City of St. Louis "*as contemplated by Section X(B)3 of the proposed settlement.*" *Id.*, p. A34 (emphasis added); see also Appendix C, pp. A55, A126.

The district court then enjoined a scheduled reduction in the school property tax rate in the City of St. Louis, *id.*, p. A35, and ordered submission of a bond issue by the School Board to the voters, with the implied threat that the court would act if the voters refused, Appendix A, p. A38, which they did. See Appendix K, p. A447. Finally, the district court stated bluntly that

> In the event the above steps fail to raise the necessary funds to satisfy the City Board's share of the implementation costs, the Court *will enter* an appropriate order, following notice and an opportunity to be heard on the amount, to increase the property tax rate in the City of St. Louis by an amount necessary to fund the City Board's share of the costs of the Settlement Plan. [Appendix A, p. A83, emphasis added.]

The court of appeals affirmed the district court, albeit that court chose to characterize the settlement (after extensive appellate surgery) as a remedy. Appendix K, p. A447. The situation confronting this Court is therefore plain: without express constitutional or statutory authority, lower federal courts have assumed control of local property tax rates in the City of St. Louis. Even if this action was taken pursuant to a judicially-fashioned remedial decree, it would raise constitutional questions of the greatest moment. That the lower courts have acted pursuant to a settlement agreement, for the provisions of which the district court disclaimed any responsibility, Appendix A, p. A10 at n. 2, serves only to highlight the usurpation of judicial power involved.[4]

---

[4] It is a cruel irony that the judicial taxation required by the settlement agreement will be borne solely by City residents, the people who were the victims of the allegedly discriminatory acts of the suburban school districts. Thus, under the agreement, even after revision by the court of appeals, a large segment of the plaintiff classes must not only bear the burden of student transfers, but must pay for the capital renovation of the entire city school system, while the interdistrict defendants, other than the State, pay nothing.

No reported federal cases support the lower courts' irruption into judicial taxation. *Griffin v. School Board of Prince Edward County,* 377 U.S. 218 (1964) did suggest that the defendant local officials could be ordered to "*exercise the power that is theirs,*" *id.* at 233, to levy taxes in order to reopen the schools; but the opinion is silent on what authority the defendants had to levy taxes in the first place. The issue of judicial taxation was not presented by the petition for writ of certiorari. See 32 U.S.L.W. 3216 (1963). On remand, it was clear that the issue in *Griffin* was not the levy of taxes, but the refusal of county authorities to appropriate funds to support the public schools, while providing substantial tax funds for sham "private" schools. See *Griffin v. Board of Supervisors of Prince Edward County,* 339 F.2d 486 (4th Cir. 1964). (In Virginia, school boards were "dependent," i.e., they had no independent power to levy any taxes—unlike the School Board here.) *Griffin,* therefore, must be read in light of the massive resistance to school desegregation obtaining at the time, together with the school finance structure in Virginia, and not as settling the serious questions of separation of powers, federalism, and district court jurisdiction over tax rates presented here. It certainly does not stand for the proposition that the Fourteenth Amendment imposes a duty to raise taxes on either state or local governments or on the federal courts, where the authority to tax is otherwise absent. Cf. *Palmer v. Thompson,* 403 U.S. 217 (1971). Nor does it establish that a district court can assume taxing powers pursuant to a settlement agreement.

Similarly, interdistrict school desegregation cases, such as *United States v. Missouri,* 515 F.2d 1365 (8th Cir.), cert. denied, sub nom. *Ferguson Reorg. School Dist. v. United States,* 423 U.S. 951 (1975),[5] are remarkable more for what they have done

---

[5] It is worth noting that two members of this Court (BURGER, C.J. and POWELL, J.) indicated that the question of the power of the district court to fix a tax rate should have been reviewed. 423 U.S. 951.

than for what they have said. In *United States v. Missouri,* although the very existence of certain school districts was part of the constitutional violation, the court of appeals refused to allow the district court to fix a tax rate in excess of the highest rate approved by voters in any of the preexisting districts. Despite its reading by the court of appeals here, this case provides little support for the proposition that the federal courts enjoy some remedial power of taxation. Indeed, the analysis in that opinion was chiefly in terms of the Tenth Amendment, and proceeded in the context of somewhat ambiguous state laws concerning school tax rates applicable where districts were annexed or consolidated. The opinion sheds no light whatsoever on the serious questions of separation of powers and fundamental limitations on the power to tax raised here.

Evans v. Buchanan, 582 F.2d 730 (3d Cir. 1978), cert. denied sub nom. *Delaward State Bd. of Education v. Evans,* 446 U.S. 923 (1980)(three Justices dissenting), the only other interdistrict case to discuss taxation, strongly counsels against the sort of action undertaken below. It granted mandamus to compel the district court to defer to a state statute fixing a tax rate, in stark contrast to the instant case, where the court of appeals cavalierly delayed the petition for writ of prohibition and then chose to leave undisturbed an undeniably erroneous order enjoining a tax reduction!

Neither does the meager authority of common law tort cases support the judicial taxation system created by the court of appeals for this case. Only two cases hold that constitutional *and* statutory *tax limits,* as opposed to deficit-spending limits, can be exceeded by order of court to pay specific judgments arising out of breach of an "involuntary obligation." *City of Catlettsburg v. Davis' Adm'r,* 262 Ky. 726, 91 S.W.2d 56 (1936); *Town of Flagstaff v. Gomez,* 29 Ariz. 481, 242 P. 1003 (1926). The theory was rejected in one case, *State ex rel. Emerson v. City of Mound City,* 335 Mo. 702, 73 S.W.2d 1017 (banc 1934). Language in numerous cases in this Court strongly indicates that an Article III court cannot order the levy of any taxes to

pay any judgment in the absence of statutory or constitutional authority for the levy. See, e.g., *Rees v. City of Watertown,* 86 U.S. (19 Wall.) 107 (1874); *Loan Association v. Topeka,* 87 U.S. (20 Wall.) 655 (1874); *United States v. County of Macon,* 99 U.S. 582 (1873); *United States v. County of Clark,* 95 U.S. (5 Otto) 769 (1877).[6] Of course, it need hardly be observed that, insofar as the settlement agreement here is concerned, it is *not* an "involuntary obligation" of anyone who joined in it; it is a settlement, made and entered into as a compromise of disputed interdistrict claims, to which the St. Louis Board of Education voluntarily subscribed as a party plaintiff. See Appendix C, pp. A55, A128; Appendix F.

The struggle to control the power to tax has been a continuing theme in Anglo-American constitutional history. The roots of the principle that taxation without representation is tyranny may fairly be said to be traceable to Magna Carta, §§12, 14 (1215). See reprint at 1 *Sources of English Constitutional History* 117-18 (Stephenson & Marcham ed., 1972). The struggle continued through the Great Rebellion, see *The Five Knights' Case,* 3 Howell S.T. 51 (1627) and *The Question of Ship Money, id.,* 843 (1637), and culminated in Britain in the provision of the Bill of Rights, forbidding taxation without consent of Parliament. 1 Wm. & Mary, st. 2, c. 2 (1689). That the American Constitution continued the struggle and refined the

---

[6] The effort of the court of appeals to distinguish these cases, Appendix K at p. A453 n. 20, is unpersuasive. It is clear that every one of these cases was profoundly influenced by what this Court conceived of as a fundamental limitation on the power of the judiciary. As noted elsewhere in this petition, the court of appeals would be on firm ground if there were any kind of statutory authority for higher school taxes in the City of St. Louis. None exists. The case heavily relied on by the court of appeals, *Louisiana ex rel. Hubert v. Mayor & Council of New Orleans,* 215 U.S. 170 (1909), is based primarily on the unlimited authority of the New Orleans city council to levy the taxes in question; which could not later be restricted so as to impair a contract. The case does *not* rest on some equitable, remedial judicial power to tax.

limitations on the power to tax cannot be doubted. The Constitution, art. I, §8 expressly provides that only Congress has the power to lay and collect taxes. Appendix H, p. A344. Except to the extent that the power has been expressly conferred on the legislative branch of government, therefore, it follows that it is reserved by the people; that being so, it may not be exercised by the judiciary.

Writing of the judicial power in reference to the Constitution, Alexander Hamilton stated:

> Whoever attentively considers the different departments of power must perceive, that in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

The Federalist, No. 78, pp. 522-23 (Cooke ed. 1961).

Today, of course, the judiciary has exerted extensive control over the power of the purse. See generally Frug, *The Judicial Power of the Purse,* 126 U.Pa.L.Rev. 715 (1978); Eisenberg & Yeazell, *The Ordinary and Extraordinary in Institutional Litigation,* 93 Harv.L.Rev. 465 (1980); Nagel, *Separation of Powers and the Scope of Federal Equitable Remedies,* 30 Stan.L.Rev. 661 (1978); Comment, *Enforcement of Judicial Financing Orders,* 59 Geo.L.J. 393 (1970). Nevertheless, to date no federal court has in fact exercised the ultimate power to raise

funds by decree, as distinguished from the more limited power of allocating funds already raised or compelling levy and collection of taxes authorized by law. The former power cannot and must not be exercised by the judiciary. See *Jones v. Wittenberg,* 330 F.Supp. 707 (N.D.Ohio 1971), aff'd, 456 F.2d 854 (6th Cir. 1972).

"The power of taxation is legislative, and cannot be exercised otherwise than under the authority of the legislature." *Meriwether v. Garrett,* 102 U.S. 472, 501 (1880). In so stating, this Court simply adhered to what must be deemed one of the cardinal principles of American constitutional law: the people can be taxed only by their own consent, which is manifested only in Congress or in their legislatures. *Id.,* 515 (concurring opinion). See also *Green v. Frazier,* 253 U.S. 233 (1920). This principle surely is part and parcel of the doctrine of separation of powers, which is firmly embedded in the Constitution. See *Immigration & Naturalization Service v. Chadha,* 103 S.Ct. 2764 (1983). It is said that this doctrine has no application to conflicts between the federal judiciary and the states, see *Elrod v. Burns,* 427 U.S. 347, 352 (1976); see also *Baker v. Carr,* 369 U.S. 186 (1962); and that the states and their agencies are necessarily subject to the federal judicial power to enforce lawful decrees, see *Commonwealth of Virginia v. State of West Virginia,* 246 U.S. 565 (1918); but the ability of federal courts to levy or coerce the levy of taxes was deliberately left open in *Virginia v. West Virginia, supra.* Until the orders in question here, no federal court has purported to directly assume a continuing power to order the levy and collection of taxes, not otherwise authorized by law, even to fund the most draconian remedies for constitutional violations. As this case demonstrates, judicial taxation does not affect merely spending priorities of the state and its agencies; it directly mulcts the people to provide funds for judicially-decreed expenditures. Under these circumstances, the question of the *power* of the judiciary to tax is a question of separation of powers, and must be evaluated not only in light of that doctrine, but also in light of

the reservation of rights by the people expressed in the Ninth Amendment. For if the people delegated the power to tax to the legislative branch only, how then can judicial taxation occur?

In this case, express constitutional or statutory authority (state or federal) is wholly absent to support the taxation decrees of the lower courts.[7] The School Board was under a statutory duty to reduce property tax revenue by one-half of its estimated new sales tax revenue; it has absolutely no authority to increase its taxes without a vote of the people of the City of St. Louis. See Mo. Const. art. X, §§11, 16-22, Appendix H, pp. A346-A347. Clearly, the only possible basis for the lower courts' action in assuming control of the school tax rate in the City of St. Louis is the Fourteenth Amendment, and then only if it provides an independent grant of power to the judiciary to levy taxes. Such is not the case. Nothing in the Amendment itself or in the debates concerning it in Congress, see Cong. Globe, 39th Cong., 1st Sess., 6, 806, 1033, 2444ff., 2459ff., App. 217ff., lends support to the notion that taxes may be levied by a federal court even to remedy a constitutional violation. A remedy may require other officers of government to act to raise funds, but the manner of levy, the amount, and the mode of its collection must be controlled by statute—whether state or federal.[8] See *Plaquemines Parish School Bd. v. United States,* 415 F.2d 817 (5th Cir. 1969). This axiom was plainly un-

---

[7] The School Board had absolutely no authority to enter into an agreement contracting away its taxing power, Mo.Const. art. X, §2. If the Board had unfettered discretion to raise taxes above their current rates, this entire controversy would be moot. It is the district judge to whom the Board looks for authority to justify (*post hoc*) its settlement agreement in this respect.

[8] The Fourteenth Amendment contains an express grant of enforcement authority to Congress. It would seem that Congress, the repository of legislative power under the Constitution, could act to authorize federal judicial intrusion into taxation, though otherwise such judicial activity would be forbidden. Cf. *Katzenbach v. Morgan,* 384 U.S. 641 (1966); *Virginia v. West Virginia, supra.* Of course, that has not occurred here.

palatable to the court of appeals, whose majority opinion demonstrates a determined misunderstanding of separation of powers, and an equally determined intention to achieve dispersal of black students attending one-race schools in the City of St. Louis, and capital renovation of the St. Louis School Board's system, no matter what the financial or constitutional cost. However, the only course which preserves fundamental liberties of the people is to recognize that the federal courts do not enjoy some independent, remedial power to levy taxes. As JUSTICE BRANDEIS remarked long ago, "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent.... The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding." *Olmstead v. United States,* 277 U.S. 438, 479 (1928).

The evil residues of slavery in this country cannot be cured by creating a new form of servitude. "The power to tax is...the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of people." *Loan Association v. Topeka, supra,* 87 U.S. at 663. Neither Article III nor the guaranty of equal protection of the law warrants judicial exercise of this power, which would, as applied here, deprive the citizens of the City of St. Louis of the right to control taxation, while leaving the rest of the state and nation free to enjoy that most crucial of all rights.[9] The Ninth Amendment, read in light of American constitutional history and Arti-

---

[9] The national importance of the orders in this case cannot be underestimated, for the decision of the court of appeals concerning remedial taxation cannot be limited to school desegregation cases. Even superficial research reveals that hundreds of state and local governmental agencies are at this moment subject to federal remedial decrees affecting schools, prisons, hospitals, and various other institutions, and entailing substantial expenditures. If the decisions of the district court and the court of appeals stand, it is likely that financially strapped local governments will not tarry in flocking to the federal courts to secure their own sources of funds. Cf. Appendix D, p. A148.

cle I of the Constitution, precludes the notion that there is some remedial power of taxation inherent in the federal courts. If the Ninth Amendment means anything at all, it must mean that the right to be taxed only by consent is protected by the Constitution.

Only review by this Court can prevent the lower courts' unlawful course of action, "the end of which no wisdom can foresee."[10] *Heine v. The Levee Commissioners,* 86 U.S. (19 Wall.) 655, 661 (1874).

B. The judgment below cannot stand in light of considerations of federalism, comity, the inherent limitations on the equitable powers of the federal courts, and the policy underlying 28 U.S.C. §1341.

The decisions of the district court and the court of appeals also implicate important questions of federalism and inherent limitations on the equitable powers of federal courts. See *Milliken v. Bradley (II),* 433 U.S 267 (1977); *San Antonio Independent School Dist. v. Rodriguez,* 411 U.S. 1 (1973). The district court's orders have swept away the individual petitioners' right to vote, significant state constitutional and statutory restrictions on taxation by the St. Louis School Board, and, so far as the people of the City are concerned, the principle that taxation without representation is tyranny. Cf. *Evans v.*

---

[10] It is vitally important to recall that the settlement agreement enforced by the lower courts places no limit whatsoever on the amount or duration of judicial taxation. The evidence adduced at the "fairness hearing" convincingly demonstrated that the cost of the settlement agreement could be enormous, and entail the addition of thousands of personnel by the St. Louis School Board. It is therefore inconceivable that judicial taxing orders can be terminated after any definite period of time, or that additional tax rate increases will not be sought as a matter of course by the School Board. See Appendix C, pp. A125-A28, A130, A134; Appendix D, pp. A148-A149; Appendix E.

Buchanan, supra; San Antonio Independent School Dist. v. Rodriguez, supra. The district court made no findings that the settlement agreement was in fact an appropriate remedy for any constitutional violation (the previous intradistrict remedy continues in full force and effect, without a tax increase, see Appendix A, pp. A40-41). No findings were made that additional taxation in the City of St. Louis was in fact necessary, or that the school tax structure in the City, or the statutory property tax reduction scheduled for July, 1983, was implicated in any adjudicated constitutional violation. For these reasons alone, the actions of the lower courts constitute the gravest abuse of judicial power and discretion since *Milliken v. Bradley I, supra.*

Although the court of appeals has made a major effort to supply the deficiencies of the district court's order approving the settlement agreement and assuming control of school property taxes, there remains substantial confusion concerning the nature of the settlement which the lower courts are enforcing. The order approving the settlement agreement, and the hearing on the agreement, were based entirely on the standards enunciated under Rule 23(e), F.R.Civ.P., governing class action settlements. See Appendix A, pp. A13-A14, and *passim.* At no time prior to appeal did the district court or anyone else indicate that the proposed settlement agreement was being considered as a modification of previous remedies for intradistrict liability. See Appendix K, p. A477 (Bowman, Circuit Judge, dissenting). Yet, when it came to approving the funding provisions of the settlement agreement, the district court suddenly shifted its ground, and attempted to rely on the adjudicated liability of the State and City School Board, ignoring the express purpose of the agreement, its interdistrict scope (student transfers were to occur not only between City and County districts, but also among and within County districts), and the undisputed fact that a large part of the settlement agreement was designed to renovate the entire City school system, for the purpose of making it more attractive to County students, and not only, or even primarily, to provide special remedial attention to all-black schools in the system. *Id.*, A31-A35; compare Appendix C, pp.

A135-A144 ("...the City Board has analyzed the needs of the school system and proposes herein the measures it would take to improve the quality of education in *all* of its schools." *Id.* at A144, emphasis added.) See also *id.*, pp. A69-A70.

This Court has made it clear that the inherent limitations on the equitable powers of the federal courts require that all remedial decress be tailored to the nature and scope of the proven constitutional violation. *Milliken v. Bradley (II), supra; Dayton Bd. of Education v. Brinkman (I),* 433 U.S. 406 (1977). The lower courts' taxing orders and the settlement agreement are tailored to nothing, except a compromise: "an agreement to settle the litigation involving paragraph 12(c) [of the district court's original remedial decree, Appendix G, p. A329] and the plaintiffs' interdistrict claims." Appendix C, p. A55. The cost of this compromise may well exceed a billion dollars. By the standards of *Milliken II* and *Dayton I,* the purposes for which the lower courts have assumed taxing power are insupportable. This case is the precise interdistrict analogue of *Dayton I.* In that case, this Court reversed an order for implementation of a system-wide remedy, based on findings that proven violations were limited to specific parts of a school district. Here, the lower courts have implemented a metropolitan remedy, based on findings that proven violations affected only a single school district, and without any findings whatsoever that the elaborate educational and capital renovation programs called for are remedial in fact. The lower courts' concern for the continuing existence of one-race schools within the City of St. Louis alone does not warrant the remedy selected, i.e., enforcement of the settlement agreement.

Finally, the lower courts' assumption of taxing powers in the City of St. Louis pursuant to the settlement agreement, and particularly the order enjoining any reduction in the School Board's property tax levy required by state law, clearly contravene the policy, as well as the letter, of 28 U.S.C. §1341. This Court recently has had occasion to emphasize the considerations of comity and federalism underlying that statute.

Fair Assessment in Real Estate v. McNary, 454 U.S. 100 (1981). Here, the district court and court of appeals have deliberately and directly displaced state constitutional and statutory provisions governing property taxes in the City of St. Louis, quite without any finding that those constitutional and statutory provisions impermissibly interfere with a remedial decree of a federal court, cf. *Wright v. Council of Emporia,* 407 U.S. 451 (1972), or are themselves infected with a constitutional violation. On its face, the state sales tax law, "Proposition C," will provide twice as much money for education in St. Louis as will be lost by the tax reduction forbidden by the district court; but the lower courts nevertheless forbade the property tax reduction in 1983, so that the St. Louis School Board could allocate that money to the settlement, and still be free to spend the sales tax revenue as it saw fit! See Appendix A, pp. A35-A36. Comity, if nothing else, demands that district judges (and courts of appeals) proceed with much less insouciance in dealing with taxation than in any other area of local administration which might be involved in constitutional litigation. Cf. *San Antonio Independent School Dist. v. Rodriguez, supra;* see also *Welsch v. Likins,* 550 F.2d 1122 (8th Cir. 1977), vacating a district court order forbidding state mental health officers and agencies from observing state fiscal and budget laws.

Petitioners believe that the time has come to answer the critical question concerning judicial taxation left unanswered in *Virginia v. West Virginia, supra,* and in modern "institutional reform" cases. It would certainly be well within this Court's supervisory powers to grant the writ of certiorari solely because the lower courts failed to observe established considerations of comity or to proceed with proper circumspection in the sensitive area of taxation. But the errors in this regard merely reenforce the need for this Court to grant the petition herein to decide that the federal courts have *no* authority to do what was done in this case.

In sum, the lower courts have assumed the fatal power of taxation, cf. *McCulloch v. Maryland,* 17 U.S. (4 Wheat.) 316, 427

(1819), pursuant to a settlement agreement, when they could not do so pursuant to a judicially-fashioned remedial decree. They have proceeded on a confused theory and an insufficient record. They have ignored 28 U.S.C. §1341, fundamental principles of separation of powers, federalism, comity, and the inherent limitations on the equitable powers of the federal courts. The circumstances of this case do not warrant disregard of the basic tenet that, under our Constitution, there are some things that government, including the judiciary, simply cannot do. Only this Court can effectively preserve the constitutional balance by granting a writ of certiorari forthwith.

II. THE DECISION OF THE COURT OF APPEALS IS IN DIRECT CONFLICT WITH CONTROLLING DECISIONS OF THIS COURT CONCERNING THE EQUITABLE POWERS OF FEDERAL COURTS, AND IS IN CONFLICT WITH DECISIONS OF OTHER COURTS OF APPEALS.

Viewed in their most limited fashion, i.e., as remedial decrees, the decisions of the district court and the court of appeals fly in the face of controlling standards for such decrees laid down by this Court in numerous cases. Notwithstanding the efforts of the court of appeals to supply findings not made by the district court, but cf. *Pullman-Standard v. Swint,* 456 U.S. 273 (1982), it is evident that the settlement agreement is not and cannot be a remedy tailored to the nature and scope of the intradistrict constitutional violation proved in this case. It is one thing to fashion a remedy which provides opportunities for victims of intradistrict segregation to transfer to desegregated schools outside the district, it is quite another to order taxation and the expenditure of hundreds of millions of dollars to finance a metropolitan freedom-of-choice plan, and massive renovation of one school system to make it perhaps more attractive for students transferring from other districts not found to have been implicated in a constitutional violation. In this respect, as noted, the lower courts have acted in a manner wholly inconsistent with *Dayton Bd. of Education v. Brinkman (I),*

supra, by attempting to impose a metropolitan remedy for an intradistrict violation, without the consent of those who are expected to pay for it, and by ordering extensive educational and capital renovation programs without any effort to ascertain whether they are in fact "remedial."

The injunction against the operation of "Proposition C," Mo. Rev. Stat. §164.013, (Supp. 1983), Appendix H, pp. A347-A350, is similarly inconsistent with the requirement laid down in *Milliken v. Bradley (I), supra,* and kindred cases, that decrees in cases like this must be truly remedial, i.e., the condition addressed by the remedy must have been caused by the constitutional violation. The operation of a sales tax law designed to provide additional revenue to education, while providing property tax relief to the taxpayers, in every school district in the state, cannot by any rhetorical metastasis be deemed the product of a constitutional violation. Moreover, there were, and can be, no findings that Proposition C will operate to impede desegregation. See *Wright v. Council of Emporia, supra; United States v. Scotland Neck City Bd. of Education,* 407 U.S. 484 (1972). The state law will provide the St. Louis School Board with two dollars in sales tax money for every dollar of property tax lost. Assuming that state tax laws can be evaluated under the standards laid down in *Wright* and *Scotland Neck,* it is patent that Proposition C does not and cannot hinder the process of school desegregation, or in any way impede the dismantling of the dual system found to have existed in the St. Louis City schools. The court of appeals admitted as much in holding that the injunction against the operation of Proposition C in the City of St. Louis cannot stand even in the light of standards enunciated by that court, not to mention this Court's standards. Yet, in a feat of illogic to be discussed at greater length *infra,* the court refused to reverse the district court and return the money to the people of the City. In this respect, the judgment of the court of appeals is at war with its opinion.

The decision of the court of appeals is also directly in conflict with cases from this Court holding that the federal courts do not enjoy the power to levy taxes, absent statutory authority. E.g., *Meriwether v. Garrett, supra.*

The decision of the court of appeals is similarly in conflict with the cases in other circuits, namely the Third and Fifth (now Eleventh), which have addressed the issue of taxation in the context of desegregation decrees, and is plainly in conflict with decisions of the Sixth Circuit concerning the permissible scope of remedies in such cases.

In *Evans v. Buchanan, supra,* the Third Circuit held that the operation of a state school tax law could not be enjoined simply because it did not conform to the amount authorized by a district court for imposition in a consolidated school district created by decree. Mandamus was granted to compel the district court to review the state statute in question (which substituted a rate fixed by the legislature for that authorized by the court in the consolidated district) in light of standards of deference customarily followed in reviewing constitutional challenges to tax laws. Cf. *San Antonio Independent School Dist. v. Rodriguez, supra.* Because the state legislature had acted to substitute its tax rate for that of the district court, the Third Circuit was able to avoid addressing the underlying question of taxation without representation clearly presented here. Nevertheless, *Evans* conflicts with the decision of the court of appeals here, insofar as it compelled the district court to defer to the operation of state tax laws. The decisions in this case show no such deference.

The court of appeals in this case also disregarded *Plaquemines Parish School Bd. v. United States,* 415 F.2d 817 (5th Cir. 1969), to the extent that the latter case rejected the proposition that *Griffin v. School Board of Prince Edward County, supra,* authorized judicial taxation without regard to state statutory or constitutional provisions respecting amount. *Pla-*

quemines also rejected the notion, adopted by the courts below in this case, that district courts should control how school districts raise money to comply with remedial decrees. Cf. Appendix K, p. A473 (Gibson, Circuit Judge, dissenting).

Insofar as it purports to authorize massive renovation of the St. Louis School Board's system under the guise of remedying the intradistrict violation, the decision of the court of appeals here squarely conflicts with that of the Sixth Circuit in *Oliver v. Kalamazoo Bd. of Education,* 640 F.2d 782 (6th Cir. 1980). There, the Sixth Circuit rejected an order imposing an expensive array of educational programs in a school district which had maintained a dual system, because there were no findings or proof that the programs were reasonably related to curing the constitutional violation or its effects. It is plain that the court of appeals in the case at bar took a radically different view of the need for proof of the constitutional necessity of massive school district renovation plans, especially capital improvements, before ordering such plans into effect. Here, the court of appeals seems to believe that once a school system is found to be infected with a constitutional violation, even the buildings within the system must be "restored" to some sort of "constitutionally acceptable" standard. Appendix K, p. A448. The view of the court of appeals in the instant case cannot be reconciled with the decision of the Sixth Circuit, and only this Court can determine which is correct.

Finally, it should be observed that the decision of the court of appeals, denying the petition for writ of prohibition filed by petitioner, is contrary to the standards laid down by this Court for granting such extraordinary relief. "The historic use of writs of prohibition and mandamus directed by an appellate to an inferior court has been to exert the revisory appellate power over the inferior court. The writs thus offer an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction, or of compelling it to exercise

its authority when it is its duty to do so." *Ex parte Republic of Peru,* 318 U.S. 578, 583 (1943); see also *Evans v. Buchanan, supra.*

Here, as in *Schlagenhauf v. Holder,* 379 U.S. 104 (1964), the gravamen of petitioners' claim in the court of appeals was lack of power in the district court to enter an order which was the first of its kind in any reported federal decision, and which raised new and important problems. "It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the Federal government of the legislative functions of the State government. It is a most extraordinary request, and a compliance with it would involve consequences no less out of the way of judicial procedure, the end of which no wisdom can foresee." *Heine v. The Levee Commissioners, supra,* 86 U.S. (19 Wall.) 661. The action of the district court here is surely of greater moment than the order under Rule 35, F.R.Civ.P., which warranted a petition for writ of mandamus in *Schlagenhauf, supra.* See also *DeBeers Consol. Mines v. United States,* 325 U.S. 212 (1945). Like the order in *DeBeers,* the district court's orders affecting the school property tax rate in the City of St. Louis were authorized neither by statute nor by the usages of equity; and they violate a positive Congressional policy embodied in 28 U.S.C. §1341. No more appropriate case for the intervention of the court of appeals by means of a writ of prohibition could have been imagined; yet that court first delayed and then refused to act, and thereby ignored the standards laid down in *Schlagenhauf, supra* and other cases in this Court.

III. THE DECISION OF THE COURT OF APPEALS, IN EFFECT REWRITING AN INTERDISTRICT SETTLEMENT INTO AN INTRADISTRICT REMEDY, SUPPLYING FINDINGS WHOLLY OMITTED BY THE DISTRICT COURT, UNWARRANTABLY DELAYING DECISION ON A WRIT OF PROHIBITION, AND REFUSING TO DISTURB AN ADMITTEDLY ERRONEOUS INJUNCTION WHICH INFRINGED UPON THE RIGHTS OF THE INDIVIDUAL PETITIONERS AS VOTERS AND TAXPAYERS, IS SUCH A DEPARTURE FROM THE ORDINARY COURSE OF JUDICIAL PROCEEDINGS THAT INTERVENTION BY THIS COURT IS NECESSARY.

Some of the more unusual features of the decision of the court of appeals have been described above: delaying consideration of a writ of prohibition until after appeals were heard, in flat defiance of Rule 21(c), F.R.A.P.; substituting or manufacturing findings necessary to support conclusions that certain elaborate educational programs were "remedial" in a constitutional sense, depite a record showing serious conflicts in the evidence, derived from a hearing which was directed not to a remedy but to "fairness" of a settlement agreement; rewriting a settlement agreement; and, last, but certainly not least, refusing to reverse an injunction that the court of appeals itself found to be legally and factually erroneous. These aspects of the decision below combine to demonstrate that the court of appeals is in need of correction through an exercise of this Court's powers of supervision. Supreme Court Rule 17.1(a).

Perhaps the most bizarre aspect of the decision below concerns the district court's injunction forbidding a school property tax reduction in the City of St. Louis. Regrettably, the opinion of the court of appeals verges on mendacity in describing why, despite the concededly erroneous nature of this injunction, it will nevertheless be left in force. One searches the court's September 13 order, Appendix I, pp. A354-A355, 717 F.2d 1180, in vain for some mention of the "equitable considerations" regarding "disruption" of school finance in the City of

St. Louis which would flow from letting the people of the City recover taxes illegally collected. Appendix K at p. A449. There are none. These "equitable considerations" were discovered *post hoc* by a court of appeals majority determined not to embarass the district judge. The implications of this part of the decision of the court of appeals are stunning: it is the functional equivalent of reversing a jury verdict, but ordering the defendant to pay the plaintiff anyway, for "equitable" reasons.

The opinion of the court of appeals, aside from badly mischaracterizing the record, also displays a complete disregard for the proper appellate function and the strictures of Rule 52, F.R.Civ.P. In *Pullman-Standard v. Swint, supra,* this Court rejected the notion that there are certain types of "facts" that can be found on appeal, even if not found, or found otherwise, by the district court. If the court of appeals was aware of *Pullman-Standard,* its opinion certainly does not show it. One reads the opinion with the feeling that the proceedings in the district court were a superfluity: the "fairness hearing" should have been conducted before the court of appeals. On the one hand, the court of appeals is at pains to assert that the district court's orders regarding funding had a sound remedial basis. Appendix K, pp. A438-A439. On the other, the court affirms here and reverses there in a desperate effort to salvage a settlement the majority viewed as socially desirable, but which they knew could not withstand scrutiny under *Milliken II* and *Dayton I, supra.*

Nowhere is the effort of the court of appeals to transform its role into that of factfinder and mediator more apparent than in its discussion of "quality education." Despite its ringing endorsement of such compensatory programs, the court bluepencils most of the programs approved by the district court, because they lack support in the record. Appendix K, p. A445. The court of appeals concludes, however, without citing to the record or to any findings of the district court, that it is constitutionally necessary that the City schools be maintained at the

AAA standard fixed by the state of Missouri. Apparently the court of appeals relies on various citations to educational journals to justify this and several other programs, designed to apply to the entire City school system and not just remaining all-black schools. Appendix K, pp. A443-A445.

The effect of the opinion of the court of appeals is to affirm the district court in ordering the state to fund certain educational programs in all-black schools, but largely to reverse as to system-wide programs. Presumably, this will greatly reduce the cost of the settlement, see Appendix D, pp. A161-A177; Appendix J, pp. A392-A403. However, this result should not obscure the fact that the district court made no findings whatsoever concerning the remedial nature of the settlement agreement or any part thereof. See Appendix A, passim.; Appendix J, pp. A371-A378.True, the district court held that its power to fund the settlement rested on its remedial powers, Appendix A, pp. A33-A34; but it made no effort to tie that conclusion to factual findings concerning all or part of the settlement's massive "quality education" components. Cf. *Oliver v. Kalamazoo Bd. of Education, supra.* Indeed, neither the court of appeals nor the district court troubled to explain how the age and condition of the school buildings in the City school system were the product of a constitutional violation. Instead, the court of appeals asserted that "the State does not question the need to improve facilities, nor its obligation to help pay for these improvements." Appendix K, p. A447. This grossly misstates the position of the State of Missouri, and casts in sharp relief the lack of evidentiary support or findings for the proposition that a multimillion dollar capital renovation in the City school system will somehow remedy segregation.

Even if its opinion were otherwise premised on sound constitutional principles, the court of appeals seriously departed from the accepted course of judicial proceedings in directing the district court to become a "super-legislature" in the matter of budgets and taxes under the appellate version of the settlement agreement. See Appendix K, pp. A455-A459. The court placed

virtually no substantial burden of proof on the St. Louis School Board to prove actual need for additional funds. Surely clear and convincing evidence of total inability to carry out the judicially-mandated programs with existing resources must be required before the district court may become involved in fund-raising. Furthermore, the court of appeals has recognized no requirement that the School Board give absolute funding priority to court-ordered remedial programs. Cf. *Evans v. Buchanan, supra,* 582 F.2d at 779-80. Under the mandate of the court of appeals, the School Board will have little incentive to seek the most cost-effective remedial programs, or to implement any remedial programs in an economical fashion. On the contrary, the incentive for the School Board is to create the greatest appearance of need for additional funds, so that tax revenues of the School Board are always increased.

Thus, the court of appeals has invested the district court with a continuing commission to supervise taxation in the City of St. Louis in order to provide additional funds to the School Board. Who will protect the taxpayers in the future? Petitioners frankly state that it is unlikely that annual hearings on tax rates will always see vigorous adversarial presentations, for it is no light matter to litigate such issues, and there are limits to petitioners' resources. The creation of this judicial taxing and budgeting procedure emphasizes the impropriety of judicial intrusion into what is and always has been a legislative process.

The court of appeals has purported to function as trier of fact and revisor of the settlement agreement below, in order to preserve the latter's constitutionality, and has set forth a blueprint for continuing judicial intrusion into property taxation in the City of St. Louis. The court has refused to reverse an unlawful injunction, thereby destroying the rights of voters and taxpayers, and defying the letter and spirit of express Congressional policy, 28 U.S.C. §1341. Only this Court can correct this egregious result by granting certiorari to review and reverse the court of appeals.

CONCLUSION

"The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny." James Madison, *The Federalist,* No. 47, p. 324 (Cooke ed. 1961). The courts below have taken the final step toward such an accumulation of power in the judicial branch, by arrogating unto the judiciary the power to tax. Only this Court can restore the proper balance between the judicial power and the legislative power, between state and nation, and between the rights of equality guaranteed by the Fourteenth Amendment and the quintessential rights of liberty guaranteed by the Ninth Amendment. Petitioners urgently request that this Court issue its writ of certiorari to review and reverse the court of appeals, and forbid the lower courts to exercise the taxing power in the City of St. Louis.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, MO 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioner

**Counsel of Record*

February, 1984

83 - 1386 (2)

No.

Office - Supreme Court, U.S.
FILED
FEB 21 1984
ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, etc., et al.
Respondents.

On Petition for Writ Of Certiorari To The
United States Court of Appeals for the Eighth Circuit

APPENDIX
Volume I

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

Volume I

Page

A. Order of District Court approving settlement agreement and enjoining reduction of tax rate A-1

B. Order of District Court denying stay A-51

C. Settlement agreement (appendix omitted) A-53

D. Excerpt from record of fairness hearing in District Court A-145

E. Report of Board of Education concerning tax rate ... A-171

F. Interdistrict pleadings A-179

G. Prior opinions A-231

H. Constitutional and statutory provisions A-344

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

ORDER

(Filed July 5, 1983)

A memorandum dated this day is hereby incorporated into and made a part of this order.

Having carefully considered the proposed Settlement Plan, the evidence duly received in support of and opposition to that Plan, public comments thereon, having considered the pertinent record in this cause, and being duly advised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. In accordance with the provisions of the memorandum, the Settlement Plan, including the Appendix and Exhibit 2, is hereby approved as fair, adequate, reasonable, and constitutionally permissible.

2. The Settlement Plan and its Appendix as revised by Exhibit 2, as approved, shall be implemented as of this date for the 1983-1984 school year, and all signatories, as well as State defendants, are required to comply with all the provisions thereof.

3. If the school districts of Mehlville and Rockwood wish to litigate rather than participate in the approved Settlement Plan, they, or either one of them, shall so notify the Court of this decision in writing by July 11, 1983, and, upon such written notification, their 12(c) liability phase trial is hereby scheduled to begin on July 25, 1983, at 10:00 a.m.

4. The State of Missouri and City Board shall share the costs of implementing the approved Settlement Plan, as more fully set forth within the Plan and this order.

5. Since allocation of costs is not specified within the Plan, those costs shared by City Board and the State of Missouri pursuant to the financing provisions of the Settlement Plan, Section X(B)(3), as approved, shall be allocated as follows:

(a) regardless of the program's or school's location, the State of Missouri shall pay in full the actual, reasonable costs of implementing the magnet programs and schools in Section III of the Settlement Plan, as approved, and in Section C of its Appendix and of Exhibit 2, *Liddell* v. *Board of Education,* 677 F.2d 623, 641-42 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982);

(b) regardless of the program's location, the State of Missouri shall pay in full the actual and reasonable costs of implementing the part-time educational programs as identified in Section V of the Settlement Plan, as approved, and in Section B of its Appendix and of Exhibit 2, *id.;*

(c) except as noted concerning capital expenditures in paragraph 5(d) below, for other programs implemented pursuant to the Settlement Plan, as approved, City Board shall pay fifty percent of the reasonable actual costs of the programs implemented within the geographic boundaries of the City of St. Louis only, and shall not pay any costs incurred for programs implemented beyond the geographic boundaries of the City of St. Louis. The State of Missouri shall pay fifty percent of the reasonable actual costs of such programs implemented within

the geographic boundaries of the City of St. Louis, and shall pay one hundred percent of the reasonable actual costs of programs implemented outside the geographic boundaries of the City of St. Louis;

(d) City Board shall retain the obligation and responsibility to fund capital expenditures needed to restore, repair, maintain, or enhance existing facilities as part of City Board's desegregation efforts. Any amount raised for capital expenditures by City Board through a voter-approved bond issue at any time during 1983-1984 shall be matched equally by the State of Missouri;

(e) the State of Missouri shall pay in full the costs of transportation of the interdistrict transfer students; the reasonable, actual costs to implement incidental programs, such as the student recruitment efforts, any community involvement centers, the Voluntary Interdistrict Coordinating Council (VICC) and its staff, the Recruitment and Counselling Center and its staff and offices, and parent involvement programs; and reasonable attorney's fees that may be awarded to the prevailing plaintiffs City Board, Caldwell, and Liddell.

6.For the payment of City Board's share of the costs:

(a) the City Board shall certify to the Court, on or before July 15, 1983, the amount needed to meet its share of the reasonable actual costs of implementing programs pursuant to the Settlement Plan, as approved, as well as the tax rate necessary to fund these costs;

(b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools;

(c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court will consider an appropriate order to obtain the funds deemed sufficient to meet

the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools;

(d) the City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis as of July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Proposition C. The amount of revenue retained by the City Board by reason of not reducing its operating levy shall be utilized to fund the implementation of programs needed to meet City Board's constitutional obligation to desegregate the City's public schools pursuant to the Settlement Plan, as approved. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984;

(e) in the event the above funding orders fail to provide the necessary funds, the Court will consider an appropriate order, following notice and an opportunity to be heard on the amount, to increase the City Board's property tax rate by an amount reasonably necessary to fund the City Board's share of the costs of implementing the Settlement Plan programs pursuant to City Board's consitutional obligation to desegregate the City's public schools; and

(f) in its discretion, City Board may use other sources available to it to fund its share of the programs implemented pursuant to the Settlement Plan, as approved. To conform this order with the prior decree of the Eighth Circuit, *Liddell, supra,* 677 F.2d at 631, any outside funds received by City Board for the purpose of implementing these programs may first be applied to reduce the City Board's share of the costs of the programs and then applied to reduce the State's share of the costs of the programs.

7. State defendants shall have discretion in the determination of the source or sources of the State funds with which to pay its share of the actual reasonable costs of implementing programs pursuant to the Settlement Plan, as approved, except to the extent that discretion is otherwise limited by the provisions of Section X of the Plan, as approved.

8. The State of Missouri shall separately pay transportation costs and the transfer student payments made to sending and receiving districts, as set forth in the Settlement Plan; and shall make its other payments in accordance with the provisions of order H(1810)82, dated December 17, 1982.

9. Each participating school district shall make a continuing effort to reduce the actual costs of implementing the Settlement Plan, as approved, without impairing the quality of the Settlement Plan's components.

10. Each participating school district shall have a continuing obligation to take all appropriate steps to secure and maintain any additional sources of desegregation assistance that may be available. If any participating school district obtains desegregation assistance from an outside source to fund a component of the Settlement Plan, as approved, the amount of such funding shall be deducted from the State's funding requirements under this order, except with regard to City Board's receipt of outside funds as detailed in paragraph 6(f) above.

11. For the effective and timely implementation of the Settlement Plan, as approved, the following budgeting procedure shall apply with regard to all actual and reasonable costs, except transportation costs and costs incurred for the student transfer payments made to sending and receiving districts, incurred pursuant to the approved Plan:

(a) each participating school district shall deliver to State defendants a proposed budget for all desegregation programs and activities intended for implementation pursuant to the Set-

tlement Plan, as approved. These budgets shall be delivered to the State on or before July 15, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years, the budgets shall be delivered to the State on or before March 1 of the preceding fiscal year;

(b) the budget for the VICC and for the Recruitment and Counseling Center (RCC) shall be filed with the Court and submitted to the State on or before July 25, 1983, for the 1983-1984 fiscal year. For subsequent fiscal years these budgets will be filed on or before March 1 of the preceding fiscal year;

(c) on or before July 25, 1983, representatives of the State and of each participating district shall identify in writing their areas of agreement and disagreement relating to budgetary matters. Since City Board has filed and the State has received the City Board's 1983-1984 budget (Exhibit 3, as corrected), representatives of the State and City Board shall meet and file their joint report on or before July 20, 1983. For subsequent fiscal years these statements of areas of agreement and disagreement relating to budgetary matters shall be submitted on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute fot the Court's consideration.

For fiscal year 1983-1984, the State shall submit in writing any objections to the budgets for the VICC and for the RCC within ten days of receiving those budgets. For subsequent fiscal years, representatives of the State and of the VICC and RCC shall identify in writing their areas of agreement and disagreement relating to budgetary matters on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration;

(d) the Court's financial adviser may participate in the budget meetings between the State and the various representatives, and

may present comments on the budgets to the Court either in writing directly, or at any subsequent hearing that may be required; and

(e) for the 1983-1984 fiscal year, any budget disagreements that remain, after the required meetings and reports, will be referred to United States Magistrate David D. Noce for a hearing on or before August 5, 1983. For subsequent fiscal years, the Court will consider any remaining disputed budget issues in a manner the Court deems appropriate.

12. The Court hereby stays further proceedings in this cause pursuant to Section XII of the Settlement Plan, as approved, except to the extent further proceedings may be required pursuant to paragraph 3 above.

13. Upon the establishment of the VICC, as described in Section IX of the approved Settlement Plan, the present Coordinating Committee for voluntary interdistrict school desegregation in the St. Louis metropolitan area shall terminate, and the 12(a) voluntary plan shall be dissolved. The VICC shall acquire all property and assume the obligations and administrative responsibility for all existing programs under the 12(a) voluntary plan in accordance with the provisions of Section IX of the approved Settlement Plan.

14. Since they are prevailing parties as to this phase of the case, plaintiffs City Board, Caldwell, and Liddell are granted leave until August 30, 1983, to file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration. Any pending issues regarding attorney's fees arising from discovery or otherwise in this phase of the case shall be dealt with at that time.

15. All pending Fairness Hearing motions and objections not heretofore ruled or otherwise dealt with herein are herewith denied.

Neither these parties nor this judge can delegate the powers of the federal court to enforce constitutional rights. The Court retains jurisdiction of this matter.

Dated this 5th day of July, 1983.

William L. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

MEMORANDUM

(Filed July 5, 1983)

I.

This matter is before the Court, following a fairness hearing, to determine whether a proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of this school desegregation case. The Settlement Plan is offered by the Liddell plaintiff class, the Caldwell plain-

tiff class, and all the school districts in St. Louis City and St. Louis County, Missouri.[1]

In 1980, defendant Board of Education of the City of St. Louis (City Board) and State of Missouri defendants were found liable for the establishment and maintenance of a racially segregated public school system within the City of St. Louis, in violation of plaintiff class members' consitutional rights. *Adams* v. *United States,* 620 F.2d 1277 (8th Cir.)(en banc), *cert. denied,* 449 U.S. 826 (1980); *Liddell* v. *Board of Education,* 491 F.Supp. 351 (E.D. Mo. 1980), *aff'd,* 667 F.2d 643 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981). To remedy this constitutional violation, in 1980 the district court (Meredith, J.) ordered the implementation of a mandatory intradistrict desegregation plan within the City of St. Louis public school system, and the development and submission of plans involving voluntary interdistrict transfers between suburban school districts and the St. Louis City school district. *Liddell, supra,* 491 F.Supp. at 353-54, as amended by Orders dated September 17, 1980, and December 19, 1980. To date, the Court has approved and certain parties have implemented two interdistrict transfer plans (the 12(a) voluntary plan and the 12(b) vocational education plan). In the present 12(c) phase of this case, the Court is considering the implementation of a third interdistrict transfer plan.

A more complete history of this lengthy litigation is found in the appendix of this opinion. Its consideration is essential to a thorough understanding of the background of this decision. Its import is incapable of compression into a newspaper headline, a radio bulletin, or a thirty-second TV spot. At the same time, its complete inclusion in the body of this opinion would submerge

---

[1] Except the Special School District of St. Louis County, which has special jurisdiction over vocational and handicapped education in that County's school districts, and is to be dealt with hereafter.

the answers to the deceptively simple questions which are presently determinative of this phase of the litigation.

Should the Agreement in Principle, submitted by the plaintiffs and twenty-two of the twenty-three suburban school districts, be approved?

Should the Settlement Plan,[2] submitted by the plaintiffs and twenty-one of the twenty-three suburban school districts, be approved as fair, reasonable, and adequate, and as not inconsistent with the Agreement in Principle?

The answer to both of these questions is, "Yes."

All but one of the twenty-three St. Louis County school districts joined in the Agreement in Principle when first submitted. That one district, Riverview Gardens, later approved the Settlement Plan, thereby ratifying the Agreement in Principle. This made approval of the Agreement in Principle unanimous by all twenty-three St. Louis County school districts. The Agreement in Principle and the Settlement Plan are accepted by all proponent plaintiffs.

Among the plaintiffs, only plaintiff-intervenors City of St. Louis and United States decline to join in this effort to settle the case. Recent months find them reluctant either to litigate or to settle.

---

[2] The Settlement Plan is repeatedly referred to by the media and some public officials as the "Hungate Plan." Although the compliment implied, inflates me with legitimate pride, it nevertheless must be denied! This judge did not write one line of the Agreement in Principle or the Settlement Plan. This comprehensive educational program, designed to resolve a difficult constitutional and social problem by voluntary, rather than mandatory, means, is the product of leading members of the St. Louis educational and legal communities. Equally important was the ability of numerous school board members, school officials, teachers, and administrators to take an area-wide view of the steps and sacrifices necessary to redress this problem.

Six years ago, the City of St. Louis and the United States each sought and obtained leave to intervene as plaintiffs in this case, then already five years old. *See* City's renewed motion to intervene, dated July 7, 1977, granted by order dated July 13, 1977; United States' motion to intervene, filed and granted August 10, 1977. After attaining plaintiff-intervenor status, for four years both parties actively participated in the numerous proceedings of this case at both the trial and appellate court levels. Yet, in the present 12(c) phase, the City of St. Louis joined in the State defendants' motion to dismiss the City as a party in these proceedings. Moreover, the United States, although opposing State defendants' efforts to dismiss it as a party in this phase, has persistently refused to disclose clearly its position regarding the pending claim until the conclusion of the evidence. *See, e.g.,* United States' responses to recovery requests,H(1466)82 at 1-2, dated October 12, 1982; H(1488)82 at 2, dated October 18, 1982; H(1515)82 at 3, dated October 20, 1982; H(1528)82 at 4, dated October 25, 1982; deposition of the United States, transcript dated November 30, 1982 at 14, 58-59; order requiring disclosure "with particularity" of United States' position, H(1871)82, dated December 29, 1982; statement of United States in response to order, H(1926)83, dated January 10, 1983. Now, while endorsing the concept and some portions of the proposed settlement, these two plaintiff-intervenors do not approve certain provisions of the proposal.

Since all twenty-three of the St. Louis County school districts approve the Agreement in Principle, along with the proponent plaintiffs, their futher agreement to the Settlement Plan would not be necessary, except insofar as its proposals may be inconsistent with the Agreement in Principle. After duly considering the pleadings, exhibits properly admitted in evidence, public comments filed, and the testimony adduced in a five-day fairness hearing, this Court finds the Settlement Plan is not inconsistent with the Agreement in Principle.

After having unconditionally accepted the Agreement in Principle, two of the twenty-three St. Louis County School Districts, Rockwood and Mehlville, proposed additional conditions upon their entry into the Settlement Plan. They made it clear they did not oppose the Settlement Plan, and Rockwood has consistently reiterated that it is a proponent of the Settlement Plan. Since the Court finds the Settlement Plan is not inconsistent with the Agreement in Principle, to which all St. Louis County school districts have agreed, and since further expressions of agreement were not required, these two districts' conditions are approved insofar as they are not inconsistent with the Agreement in Principle and the other provisions of the Settlement Plan, to which twenty-one of the twenty-three St. Louis County school districts have agreed. Thus, Rockwood and Mehlville are also members in good standing of the Settlement Plan.

If Mehlville or Rockwood, or both, wish to litigate this issue further, they shall so notify this Court in writing by July 11, 1983, and the trial of the 12(c) liability of either or both of said school districts wishing to contest the matter shall begin July 25, 1983.

Expensive adversary trials ultimately deny justice to countless deserving people. This litigation has already consumed eleven years, adn absent a settlement promises to consume many more. Society's greatest opportunities lie in encouraging human inclinations toward compromise, rather than stirring our tendencies for competition and rivalry. If lawyers, educators, and public officials do not help marshall cooperation and design mechanisms that promote peaceful resolution of conflicts, we shall miss an opportunity to participate in the most creative social experiments of our time. "A Flawed System," by Derek C. Bok, *Harvard Magazine,* May-June, 1983, at 38-71.

The Court commends the school officials and attorneys in this case, including the amicus curiae, Shulamith Simon, and

the Special Master, D. Bruce La Pierre, along with the educational and religious leaders of this community, all of whom must receive full credit for bringing us to what has been called the threshold "of an historic settlement like none other achieved in this country, and far beyond the wildest dreams of the participants: a settlement agreement which would set the standards by which all other desegregation plans would be measured; a settlement agreement which would bring to an end on an amicable voluntary basis, 11 years of emotional, complicated and sometimes divisive litigation." Opening Statement of the State of Missouri defendants, Transcript of Fairness Hearing, May 13, 1983, at 6.

Finding parties, as diverse as those present here, reaching such a degree of unanimity as has been achieved by the proponent plaintiffs and the twenty-three St. Louis County School districts, would give any court pause before disapproving the efforts of these parties to find a voluntary solution to a complex constitutional problem in which legal, educaitonal, political, and financial problems are inextricably entwined.

II.

Having found the Settlement Plan is not inconsistent with the Agreement in Principle, the next question presented is whether the Settlement Plan is fair, reasonable, and adequate and constitutionaily sufficient.

(A) Pursuant to Fed. R. Civ. P. 23(e), the Court may only approve a class action settlement that is fair, reasonable, and adequate. *Grunin* v. *International House of Pancakes,* 513 F.2d 114, 123 (8th Cir.), *cert. denied,* 423 U.S. 864 (1975). The Court must also insure that the terms of the agreement meet constitutional standards. *See Liddell* v. *Caldwell,* 546 F.2d 768, 773-74 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977). In reaching its decision on the proposed agreement, the court may not decide unsettled issues in the case. *Grunin, supra* at 123-24. Further-

more, the Court must balance the public interest in favor of settlement against the interests of class members and the public as a whole. *Armstrong* v. *Board of School Directors,* 616 F.2d 305, 312-14 (7th Cir. 1980).

In *Grunin* the United States Court of Appeals for the Eighth Circuit specified that a district court determines the adequacy of the settlement by considering:

> (1) the strength of the merits of plaintiffs' case balanced against the resolution offered in settlement;
>
> (2) the complexity, length, and expense of further litigation;
>
> (3) the amount of opposition to the proposed settlement; and
>
> (4) defendants' overall financial ability to pay.

Grunin, supra at 124; Manual for Complex Litigation, § 1.45 at 56 (5th ed. 1982).

Other factors the Court may consider include:

> (5) the presence of collusion in reaching the settlement;
>
> (6) the opinion of competent counsel as to the settlement's fairness and adequacy;
>
> (7) the class members' reaction to the settlement; and
>
> (8) the stage of the proceedings and the amount of discovery completed in the case.

3B Moore's Federal Practice ¶ 23.80[4] at 23-521 through 23-524.

(1) **The Strength of Plaintiffs' Case Balanced Against the Resolution Offered in Settlement.** By their interdistrict claims, City Board and Caldwell assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact,"

a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954). City Board and Caldwell further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. In support of their allegations, these plaintiffs would seek to show student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, and failures or refusals to consolidate school district boundaries, among other acts or omissions by defendants. As a remedy for the alleged constitutional violations, City Board and Caldwell seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful;"

(b) injunctive relief for the development and implementation of a remedial plan; and

(c) an award of attorney's fees and expenses.

With regard to the injunctive relief, these plaintiffs would seek consolidation of all St. Louis County, Jefferson County, and St. Charles County districts and the City of St. Louis district into five districts and would seek extensive student reassignment and transportation as necessary to achieve complete school desegregation. *See, e.g.,* Report of the Board of Education of the City of St. Louis Pursuant to Paragraph 12(c) of the Court's order dated May 21, 1980, as amended, dated November 16, 1981; Final Report on 12(c) Plan filed by City Board on February 10, 1982. They would also seek desegregation of teacher faculties, creation of uniform curricular and other educational standards, and the initiation of special educational programs, including magnet schools.

The St. Louis County school districts, as well as other defendants, denied the alleged constitutional violations and would

have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each county school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

Without explicitly addressing the school districts' alleged liability, the proposed Settlement Plan provides for:

> (i) voluntary interdistrict transfers of students, with specified ratios and goals for the racial balance of student populations in participating districts;
>
> (ii) a hiring and transfer program, with specified goals for the racial balance of administration and teaching staff of participating districts;
>
> (iii) the establishment of specialized educational programs, including: programs focused on the all-black schools remaining within the City of St. Louis; magnets; part-time programs; and cooperative programs with paired schools and with local cultural, civic, and business institutions;
>
> (iv) provisions to unsure equitable treatment of all students;
>
> (v) one administrative body to coordinate and review implementation of the programs;
>
> (vi) various enforcement and grievance procedures; and
>
> (vii) an award of reasonable attorney's fees to City Board, Liddell, and Caldwell plaintiffs.

Thus, although the Settlement Plan does not presently resolve the City Board's and Caldwell's request for declaratory relief or their allegations of defendants' liability, the Settlement Plan

provides proponent plaintiff class members with immediate, extensive opportunities to receive a quality education in a broad range of desegregated settings throughout the St. Louis metropolitan area.

(2) **The Complexity, Length, and Expense of Future Litigation.** At present there are three remedial plans already approved and implemented in the metropolitan area:

(a) the intradistrict plan within the City of St. Louis only;

(b) the 12(a) voluntary plan providing for interdistrict transfers among the City and fifteen St. Louis County school districts; and

(c) the 12(b) vocational education plan providing for interdistrict transfers between the vocational programs of the City and those of the Special School District of St. Louis County.

This phase of the eleven-year-old lawsuit involves:

(i) two certified plaintiff classes;

(ii) seven "active" St. Louis County school district defendants against which discovery is complete, pretrial materials are filed, and trial may proceed;

(iii) ten St. Louis County school district defendants that are subject to stay orders due to their participation in the 12(a) voluntary plan;

(iv) five St. Louis County school districts that have not yet been served as defendants due to a stay order entered upon their participation in the 12(a) voluntary plan from its inception;

(v) one St. Louis County school district that has not yet been served as a defendant due to a stay order entered in consideration of the district's unique status as a product of

a prior court-ordered desegregation plan of consolidation of three school districts; and

(vi) several other parties who are prepared for trial, i.e., State of Missouri defendants; St. Louis County government defendants; plaintiff-intervenor City of St. Louis, etc.

Plaintiffs could immediately go to trial against only seven St. Louis County school districts, and would at least have to seek to lift or vacate stays and pursue discovery efforts before going to trial against the other sixteen St. Louis County school districts. Absent the Settlement Plan, there is doubt that such a broad remedy could be imposed by the Court until all school districts had an opportunity to be heard in a 12(c) liability hearing. Thus, if the Settlement Plan is not approved, plaintiffs must proceed against district sets of St. Louis County school districts in order to litigate fully the pending 12(c) interdistrict claims.

In contrast to this potentially prolonged judicial process, the Settlement Plan promises immediate and broad implementation of its programs since it is proposed by the proponent plaintiffs, City Board, Liddell, and Caldwell classes, and all twenty-three St. Louis County school districts, regardless of their status as "active" or non-active parties or as nonparties.

The history of this case, moreover, shows the parties' propensity to appeal decisions of this Court. Since the parties are not unanimous in their participation in this Settlement Plan the Court doubts that approval of the Settlement Plan will foreclose appeals at this stage of the case. The Court, however, determines that, with approval of the Settlement Plan, there will be a reduction in the number and scope of any appeals, as well as immediate implementation of the proposed programs pending resolution of the appeal process.

(3) **The Amount of Opposition to the Proposed Settlement.** To express any opposition to the proposed Settlement Plan, in-

terested persons could either file written comments or appear in person at the fairness hearing. In addition to proponents' presentation at the fairness hearing, the Court heard testimony and oral statements from eleven non-party individuals who expressed opposition to the plan, with nine of those appearing on behalf of organizations.

State defendants and plaintiff-intervenor City of St. Louis also presented evidence in opposition to the proposed Settlement Plan.

Additionally, the Court received forty-two written statements from interested individuals and organizations, including statements from some of those who presented statements at the fairness hearing. Some of the statements filed were joined in by several individuals.

In considering the extent of opposition, the Court must view the agreement in its entirety, rather than isolating individual components of the agreement for analysis. *Armstrong, supra,* 616 F.2d at 315. The settlement, moreover, is a product of compromise efforts by adversaries. Usually neither side will attain all of its goals in such a settlement. The Court must respect the terms derived from the parties' negotiations as long as the agreement does not violate consitutional standards and is found adequate, reasonable, and fair. *See Armstrong* v. *Board of School Directors,* 471 F.Supp. 805, 812-13 (E.D. Wis. 1979), *aff'd,* 616 F.2d 305 (7th Cir. 1980).

The amount and type of opposition expressed against this Settlement Plan is not overwhelming in light of the scope and notoriety of this lawsuit. Many statements are thought-provoking and informative. Others seem to misinterpret:

> (a) the voluntariness of the Settlement Plan, which contains no court-imposed student or staff reassignments, transportation requirements, district consolidations, or school closings, to name just a few of the court-mandated remedies available if the requisite interdistrict liability is found;

(b) the scope of and issues addressed by this phase of the lawsuit, which phase focuses on interdistrict school desegregation as it affects court-determined segregation within the City's public schools, and which does not focus on employment discrimination, housing problems, or on alleged intradistrict violations within other districts; or

(c) the constitutional desegregation principles, which as yet do not focus solely on improving the quality of education in existing one-race schools.

The Court has considered all statements presented by members of the public and understands that those not associated on an ongoing basis with this prolonged and complex case might misapprehend certain points.

(4) **Defendants' Overall Financial Condition and Ability to Pay.** While a customary factor to consider in determining the adequacy of a proposed settlement, defendants' ability to pay is not a relevant factor in determining whether or not to approve a class action settlement in a school desegregation case. *Armstrong* v. *Board of School Directors,* 471 F.Supp. 800, 805 (E.D. Wis. 1979), *aff'd,* 616 F.2d 305, 326 n.31 (7th Cir. 1980).

(5) **The Presence of Collusion in Reaching the Settlement.** The Court may analyze the agreement and the negotiating process to determine whether the agreement is unfair because of fraud or collusion. Here there is no contention by any Settlement Plan participant or by any objector that collusion exists to taint the proposed Settlement Plan.

Certain parties, who are not signatories to the Settlement Plan, and a nonparty teachers' union have expressed chagrin at their absence from the negotiating process that resulted in the Settlement Plan. *See, e.g.,* Proposed Findings of Fact and Conclusions of Law filed by the City of St. Louis on June 1, 1983; Motion to Intervene filed by teachers' union Local 420 on April 18, 1983.

The City of St. Louis did not complain in any manner when the State defendants sought to dismiss the City as a party in this phase of the case. *See* Motion to Dismiss the United States, Craton Liddell, et al., and the City of St. Louis as Parties Plaintiff in the Inter-District Phase of the Litigation, filed by State defendants on May 10, 1982. In fact, the City explicitly joined in the State defendants' motion to dismiss the City as plaintiff-intervenor. The Court denied that motion and the City of St. Louis remained as a plaintiff-intervenor in the 12(c) phase of this case. As a party participant, the City of St. Louis opposes particular provisions of the proposed Settlement Plan.

With regard to the teachers' union, Local 420, it did not seek party status in this case until April 18, 1983. Granted leave to file as amicus curiae, Local 420 has intermittently presented its position on various issues throughout the course of this litigation. Recently, the Court denied the union's motion to intervene, and has permitted the filing and consideration of statements submitted by Local 420 regarding the proposed Settlement Plan.

No party complaining of exclusion from any negotiating session has timely sought relief from the Court on this question. The Court views with some degree of skepticism those who wait until two are out in the ninth inning before complaining that they were not asked to name the starting pitcher.

Assuming such exclusion is unusual in multiparty, complex litigation, the Court fails to see how such absence, in and of itself, constitutes collusion or fraud to render a proposed agreement unfair or unreasonable. In this case, moreover, the negotiating process was not initiated or, for the most part, conducted by the parties alone. The Court appointed a nonparty Special Master "to explore the possibility of settlement." This diligent and competent Special Master was assisted in his efforts by a court-appointed Amicus, representing the public interest. The presence of these persons throughout the major part of the negotiating process renders any suggestion of possible collusion or fraud less tenable than in other settlement situations.

(6) **Opinion of Competent Counsel.** In support of the Settlement Plan, counsel for proponents submitted an affidavit, acknowledging their familiarity with the record in the case, the parties' positions in this phase, and the Settlement Plan's terms. In their opinion, the proposed Settlement Plan is a fair, reasonable, and adequate resolution of this phase of the case.

Although the Court may not delegate to counsel the Court's duty and responsibility to determine the adequacy of a proposed agreement, the Court may consider competent counsel's opinion. *Armstrong, supra,* 616 F.2d at 325. Here, the great majority of proponents' counsel have been involved in this case since at least the filing of the interdistrict claims three years ago. All counsel appear to the Court thoroughly familiar with their clients' positions, skilled to conduct this litigation in a competent manner, and knowledgeable of the record of the case and applicable law.

Thus, the Court considers and gives some weight to counsel's opinion, although it is not dispositive and is only one of the several factors considered by the Court in passing on the Settlement Plan's adequacy.

(7) **Class Members' Reaction to the Settlement.** Both white and black members of the classes have participated in these proceedings and some have objected to particular aspects of the proposed Settlement Plan.

Furthermore, at the fairness hearing, Minnie Liddell and Dr. James DeClue, two of the named plaintiffs, acknowledged they had reservations regarding certain provisions of the Settlement Plan but, as an aspect of compromise, they had determined other benefits gained by the Settlement Plan rendered it fair, reasonable, and adequate.

All of the objections have been considered by this Court. The Court recognizes that not all members of the class would approve the proposed settlement. If the Court would not approve

the Settlement Plan without unanimous agreement of the class members, then it could never approve a settlement in this case.

The Court may approve a fair settlement over objections by some or many class members, and even despite criticism by some named plaintiffs. *Armstrong, supra,* 471 F.Supp. at 804, *aff'd,* 616 F.2d at 326. Here, the number of objectors is not undue in the circumstances of this case, given its extensive notoriety, the many thousands of plaintiff class members, the importance of the plaintiffs' claims, and the nature of the litigation. The amount of opposition by class members and members of the community here is comparable to that in *Armstrong* where forty-five persons testified at the fairness hearing and many others submitted written statements, "most to express their dissatisfaction with the settlement," which was ulitmately approved as fair. *Armstrong, supra,* 616 F.2d at 326.

(8) **Stage of the Proceedings and the Amount of Discovery Completed.** The Settlement Plan was proposed after extensive discovery was completed and pretrial materials, including synopses of witnesses' testimony, were submitted on behalf of both plaintiff and defendnat parties in this phase of the case. Furthermore, both plaintiff and defendant proponents have submitted summaries of the evidence they had intended to offer if this phase of the case proceeded to trial. Also, this phase of the case follows the determination of the State's and City Board's liability for segregated conditions within the City's public schools, and implementation, with appellate court approval, of a mandatory intradistrict remedial plan and two voluntary interdistrict plans.

(B) In light of the voluminous record, prior court orders, and the information derived from the fairness hearing and public statements regarding the Settlement Plan, the Court finds there is sufficient information available to determine the fairness, reasonableness, and adequacy of the Settlement Plan.

After considering each of the relevant factors set forth above, the Court finds the proposed Settlement Plan is fair, reasonable, adequate, and constitutionally permissible.

III.

Must the Settlement Plan be approved without alteration? Yes, except insofar as the Court finds technical, perfecting, and non-substantive changes necessary and reasonable. *Cf. Liddell* v. *Board of Education,* 677 F.2d 626, 634 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982). For instance, as a result of the fairness hearing and subsequent documentation, it developed that

(a) $133,837.17 proposed for the 1983-1984 Settlement Plan budget duplicated amounts proposed in the 1983-1984 intradistrict budget; and

(b) $246,221.92 proposed for the After-School program was erroneously included as a duplication within the Settlement Plan budget itself; and

(c) $20,000.00 proposed for bus passes for students attending the as yet nonexistent alternative high school was erroneously included in the Settlement Plan budget. No one could reasonable contend that the Court should approve expensive errors acknowledged by parties to exist.

Of the Plan's twelve major components, Sections I, II, III, V, VI, VII, VIII, IX, XI, and XII are approved without substantive change.

Section IV on Quality Education, and Section X, dealing with Financing, will also be approved with the non-substantive changes noted in the following discussion. When considering quality education and financing, the Court is constantly mindful of two sometimes conflicting restraints:

(a) the Court cannot allow rights guaranteed by the Constitution to be derogated by the action or inaction of the legislative or executive branch;

(b) parties should not gain in Court that which they have legitimately lost in the legislature or at the ballot box.

The Court has considered the financial adviser's receommendations along with the comments filed thereon. The Court-appointed financial adviser, Dr. Warren Brown, recommends the creation of a small committee to approve "all activities, procedures, records and expenditures which are undertaken pursuant to provisions of the SA [Settlement Agreement]." Rather than require the establishment of yet another committee to provide an "approval procedure" under this Plan, the Court finds that such an "approval procedure" is implicit in the powers and responsibilities of the VICC and in the requirement that participants in this Plan exercise their rights and obligations in good faith. This good faith requirement includes efficient handling of the limited resources available to implement the programs, consideration of the quality and stability of implemented programs, and a responsibility to maintain monitoring, review, and accountability practices and procedures. To accomplish these implied requirements, the participants may decide to establish policies and procedures for the whole VICC, or may establish a standing or unrelated committee, or may delegate these functions to one or more staff or committee persons. School administration cannot be static. Flexibility is essential to success.

The financial adviser makes certain recommendations regarding the transition and initial activities of the VICC. To the extent these recommendations mirror several proposals of the Settlement Plan, they are approved.

On magnet schools, the advisor states, in part, that "activating new magnets for 1983-84 should be done deliberately *and only after a rigorous needs assessment*" (emphasis added). Section III of the Settlement Plan contains a review and approval procedure if plan participants seek to add to or expand listed magnets in school years after 1984-1985. The review and approval procedure does not explicitly apply to the new or expanded magnets proponents suggest for implementation in the 1983-1984 and 1984-1985 school years. The financial adviser's

recommendation is well-taken. Noting that proponents do not mandate, but only suggest, that the listed magnets be created and/or expanded in the next school years, and recognizing the limitations of existing resources and the overall good faith requirement of plan participants, the Court directs plan participants to analyze and review the need of each expanded and new magnet proposed for 1983-1984 and 1984-1985 prior to the program's implementation. Plan participants should balance the need for and benefit of such magnets in light of programs already existing throughout the St. Louis metropolitan area, the need to coordinate recruitment efforts, and limited resources, among other factors.

As an alternative to the Plan's student transfer payment provisions, the financial adviser generally recommends that all state aid payments and trust fund allocations be sent to the student's home district and the home district pay a reasonable tuition to each host district receiving transfer students. This recommendation responds to State defendants' contention that the Plan's financing provisions might overcompensate participating school districts. The Court should insure stable and adequate participation in the Plan without providing an undue financial windfall to district participants. At this time, the Court deems the financing provisions reasonable and adequate to compensate districts for certain costs, particularly start-up costs, attributable to their implementation of this Plan, and will therefore approve the student transfer payment provisions of the Plan's financing section. The Court, however, recommends that the participants review the financial adviser's suggested alternative, as well as others, after some experience with implementation of the Plan.

The financial adviser generally endorses the State defendants' proposal to reduce transportation costs of interdistrict transfer students by zoning or "zipcoding" areas within which students are transported. In practice, this will limit the choice of schools available to transferring students from a given residential area. Because of the limit on student choice and the probable hin-

drance to school district participants' recruitment efforts, the Court does not approve a transportation plan that effectively limits student choice under the Settlement Plan. Despite the lack of approval for the suggested zipcoding system of transportation, the Court will commend any efforts the parties can make to reduce the costs of transportation, so long as opportunites for, and safety of, the student will not be compromised.[3]

---

[3] "Today, for most school children, busing is a convenience provided by the school system. Because of the greater economy and educational benefits achieved through consolidation, the number of schools and districts has declined enormously since the last century, so that today, for over half of the nation's children, the 'neighborhood' school is no longer a reality; the distances to school are such that they ride a bus to school. Less than 7 percent of those children, or 3.6 percent of the total number of school children, are bused for the purpose of desegregation.

"The amount of time spent on school buses and their costs have figured prominently in criticism directed at busing for school desegregation. But statistical studies indicate that the median travel time for elementary school students was less than 15 minutes; only 15 percent of those students traveled more than 30 minutes.

"Critics should also be mindful of the fact that present constitutional law recognizes that a desegregation plan may not mandate busing involving time that would adversely affect the health of the students or the achievement of educational objectives. To the extent unreasonable transportation times are being imposed, then, modifications can and should be sought under existing law.

"The costs of busing have also been grossly misperceived by the public. One witness did a national survey of public attitudes about busing for desegregation, and learned that most people believe that more than a quarter of the school budget is spent on this function. In fact, the percentage is closer to 0.2 percent. Thus, the suggestion that 'the money that is being spent on busing could be directed toward improving that quality of education perhaps through improved teacher salaries or better schools or books . . .' must be recognized as inviting only minor improvements.

"In sum, criticism of busing for desegregation must be considered in light of the following: most American children are bused for non-

In the Appendix to the Settlement Plan, and again in proponents' Exhibit 2, City Board specified programs for the "Improvement of the Quality of Education throughout the St. Louis public schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools." The St. Louis County school district proponents stated that, although they, as well as other parties,

> recognize the importance of the concept of the improvements of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court [,] . . . [t]hey do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design.

Despite this apparent lack of agreement on the programs listed in the Appendix and its companion Exhibit 2, those documents contain details of programs listed in other Settlement Plan sections, sections to which all proponents have agreed.

For example, Section V of the Settlement Plan, a section to which all proponents agree, contains proposals for the following part-time educational programs: "Pairing and Sharing," "Springboard to Learning," "The School Partnership Program," "Ethnic Heritage," "Radio Station KSLH," "English as a Second Language," "Honors Art," "Honors Music," and "Mass Media." Each of these enumerated programs is also listed in the Appendix and Exhibit 2.

---

racial reasons without apparent educational or health harm, or parental disapproval; relative to the total costs of public schools, the costs of busing for desegregation are not great; dissatisfaction with this method is voiced more often by those fearing future orders or otherwise not presently involved, than those participating in such a plan." (footnotes omitted.) Report of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Cong., 2d Sess., Mar., 1982, at 18-19.

This "double inclusion" situation is also true of the City magnets proposed as new or expanded programs for the 1983-1984 and 1984-1985 school years. The City magnets are listed in both Section III, to which all proponents agree, and the Appendix and Exhibit 2.

To the extent the programs in the Appendix and/or Exhibit 2 are agreed to by all proponents of the Plan, those programs may be immediately implemented in accordance with the terms of the relevant section of the Settlement Plan and any implicit conditions deemed applicable. The Court finds agreement by the proponent plaintiffs and all St. Louis County school districts on such programs, and the Court would expect them to be among the earliest implemented.

The rest of the Quality Education programs should be considered for implementation by the City Board as soon as the proper priorities can be established and plans coordinated for the interdistrict desegregation of schools and the establishment of quality education in the one-race schools remaining.

Pursuant to the financial adviser's recommendations, the Court directs the parties to focus on the following programs at an early date:

IMPROVEMENT OF STAFFING RATIOS

A301 Reduce pupil-teacher ratios to county average
A302 Restore art, music, and physical education staff
A305 Increase nursing and counseling services
A402 Expand opportunities for all-day kindergarten
A503 Expand and improve extracurricular athletic activities

SPECIAL PROGRAMS FOR
NON—INTEGRATED SCHOOLS

B101 Lower pupil-teacher ratios
B102 Coordination of instructional and motivational programs
B201 After-school remedial and enrichment programs

B203 Summer educational experience
B205 Parents as teachers
B206 Peer tutoring
B208 Role model experiences
B301 Parent and staff seminars

SPECIAL INSTRUCTIONAL PROGRAMS

A403 Restore after-school tutorial program
A409 Gateway Summer Institute
A410 Student leadership
A501*Honors Art and 4th R Gallery
A601*Springboard to learning
A603*Pairing and sharing program
A604*School partnership program
C103*First phase magnet school plan

* Programs so designated are approved by all proponents.

INSTRUCTIONAL SUPPORT SYSTEMS

A102 Curriculum supervision
A201 Upgrade library/media service
A202 Audiovisual services
A702 Establish a staff development unit

SCHOOL/COMMUNITY RELATIONS

A805 Strengthen school-parent-community communications and involvement
A806 Strengthen the capabilities of the public affairs unit

PLANNING AND DEVELOPMENT

A101 Curriculum development
A401 Develop and implement early childhood education program
A813 Desegregation planning and monitoring
A901 Improvement of the quality of school facilities

These enumerated programs should be analyzed and reviewed for immediate implementation, with "immediate" meaning within the 1983-1984 school year. City Board may give priorities to these programs so that some are implemented by September, 1983, some implemented by January, 1984, some before the end of the school year, and others in the 1984-1985 school year. As the financial adviser suggests, the foregoing priorities should be established and programs analyzed so as to maintain the stability and quality of implemented programs for participating students and to limit excesses that may "topple the [quality education] program" through "overload and waste."

By approving proponents' efforts to address and improve the quality of education within the City of St. Louis, the Court is not expressing either endorsement or disapproval of all the programs mentioned in the Appendix or Exhibit 2, nor is the Court intending to limit or preclude consideration of additional quality education programs.

The financial adviser also recommends that City Board complete a long-range study of its plant facilities. To the extent building and facilities improvements are part of the desegregation remedial effort, the Court endorses such long-range study and planning, especially in light of possible changes that may occur throughout the course of this remedial effort in student and staff populations, as well as regular and specialized educaonal programs. Thus, the Court accepts the present recommendation and directs the City Board to undertake such long-range analysis and planning as are reasonable and feasible. The Court notes that, in accord with the adviser's suggestion, the funding effort for these facility improvement efforts should come mainly from local revenues, with one-time assistance from the State due both to "unique conditions" within the City and the need to treat equitably all students throughout the St. Louis metropolitan area as part of this desegregation remedial effort.

The financial adviser next recommends the addition of four state supervisors in the metropolitan area to assist implementa-

tion of this Plan. The Court does not find such additional staff proposed as part of the Plan presented by proponents, and for that reason does not interject this as a prerequisite to implementation of the Plan. To the extent the State defendants and/or plan participants deem such additional staff advisable, they may consider this recommendation.

The financial adviser recommends that City Board undertake a management study, a particularly internal matter which should be addressed by the City Board, and the Court will not require such an undertaking as part of the interdistrict desegregation plan.

In the Settlement Plan, the parties recognize that successful implementation depends on a sound and equitable financing arrangement. Anticipated transfer of up to 15,000 students, major reductions in student-teacher ratios, development and expansion of magnet schools, renovation of antiquated facilities, and improvements in curricular offerings within the City schools, as well as other aspects of the Plan, will require substantial additional expenditure of funds for the education of public school children in St. Louis.

Estimates of first year costs range from $37,000,000[4] (financial adviser) to $87,000,000 (City School Board) to well over $100,000,000 (State defendants). Because of the wide divergence and lack of agreement of the estimates, the Court enters no findings or orders at this time regarding the amount of funds likely to be necessary for 1983-1984, except to note that it will be substantial and that difficult decisions will have to be made in order to obtain the necessary amount.

---

[4] The financial adviser's estimate excludes any amount for attorney's fees for prevailing parties. Within 60 days, attorneys shall file any claim for fees and costs, together with time sheets, affidavits, and any necessary supporting documents for the Court's consideration.

For twenty-nine years, black school children of St. Louis have been urging the fulfillment of the promise of constitutional equality. For twenty-nine years, Missouri has created new programs and expanded old ones with funds that should have gone to students whose constitutional rights have been violated. The constitutional responsibility must now be faced.

The primary responsibility for funding the Settlement Plan rests with those parties who have been adjudicated as liable under the Constitution for segregated conditions within the City's public schools — the State of Missouri and the Board of Education of the City of St. Louis. The sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of a segregated school system. Thus, all proposed expenditures must be justified on this basis.

In no way should any funding provisions presently authorized by the Court be construed to authorize expenditures unrelated to City Board's desegregation obligations under the Constitution and the Settlement Plan as approved.

The Settlement Plan provides that the costs are to be shared by the State and the City school board through State funding of various programs and a tax rate increase in the City of St. Louis to be ordered by the Court. In securing the protection of constitutional rights, the Court's responsibility and power to implement a desegregation plan with a directive to increase taxes should be exercised only as a last resort and in a manner designed to assure that taxpayers are not overburdened. The Court has no desire to employ its equitable powers to fine or otherwise punish for contempt, so long as the necessity therefor can be avoided.

This Court has the authority to order the State of Missouri, which has already been adjudicated a primary constitutional violator in causing school segregation in the City of St. Louis, to fund the voluntary interdistrict transfers and improvements in

the quality of education in the City schools provided for in the proposed settlement in order to further remedy the State defendant's constitutional violations. *Liddell, supra,* 677 F.2d at 629-30, 641-42. *See also Milliken* v. *Bradley,* 433 U.S. 267 (1972); *Hills* v. *Gautreaux,* 425 U.S. 284 (1976); *Liddell, supra,* 667 F.2d at 655; *Reed* v. *Rhodes,* 500 F.Supp. 404 (N.D. Ohio 1980), *aff'd,* 662 F.2d 1219 (6th Cir. 1981), *cert. denied,* 455 U.S. 1018 (1982). While the State claims it is experiencing financial constraints, it has not responded historically to the educational needs of its school age children. *See Yaris* v. *Special School District of St. Louis County,* No. 81-423C(1)(E.D. Mo. Mar. 3, 1983), slip op. at 40 n.7 (". . . only one state in the Country appropriates less funds than the State of Missouri for its educational system").

This Court has the authority to order the City Board, already adjudged a constitutional violator, to increase its tax rate, if necessary, as contemplated by Section X(B)3 of the proposed settlement. *Griffin* v. *County School Board,* 377 U.S. 218, 233 (1954); *United States* v. *Missouri,* 515 F.2d 1365, 1372-73 (8th Cir.), *cert. denied,* 420 U.S. 951 (1975). *Accord Wichita Finance & Thrift Co.* v. *City of Lawton,* 131 F.Supp. 788, 790 (W.D. Olka. 1955); *State ex rel. Martin* v. *Harris,* 115 P.2d 80, 45 N.M. 335 (1941); *Raynor* v. *King County,* 97 P.2d 696, 708 (Wash. 1940); *City of Catlettsburg* v. *Davis' Administrator,* 91 S.W.2d 56, 262 Ky. 726 (1936); *Town of Flagstaff* v. *Gomez,* 242 P. 1003, 1004 (Ariz. 1926); *City of Long Beach* v. *Lisenby,* 179 P. 198, 200 (Cal. 1919)(which hold that a court may raise the tax levy of a govenmental unit even above state-imposed constitutional and statutory tax rate maximums in order to satisfy a judgment against the governmental unit for breach of an involuntary obligation). *But see State* v. *City of Mound City,* 73 S.W.2d 1017, 1024 (Mo. 1934)(en banc). The authority to exercise such power may well be questioned when based on anything less than the protection of federally guaranteed constitutional rights. "State policy must give way when it operates

to hinder vindication of federal constitutional guarantees." *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971); *see Haney* v. *County Board of Education*, 429 F.2d 364, 368 (8th Cir. 1970).

This Court has previously ordered the use of surplus revenues in the City Board's bond retirement account for funding of its 1980 desegregation order, and the Court of Appeals has affirmed. *Liddell, supra*, 491 F.Supp. at 353; *Liddell, supra*, 667 F.2d at 655.

At this time, the Court declines to order a City Board tax rate increase beyond the rate imposed during the 1982-1983 year, but reserves the option to do so at a later date should City Board lack sufficient revenues or surplus so that Court action becomes necessary to prevent a denial of constitutional rights. The City Board would, of course, apply any surplus found on hand first to relieve itself of its status as a constitutional wrongdoer by alleviating segregated schools and providing improved quality education.

The financial adviser estimates new revenues for the City Board as follows:

Anticipated New Revenues

A. It is estimated that the City Board will experience revenue increases in 1983-1984, in addition to current local, county, and State sources, as follows:

1.	State sales tax (Proposition C) ($9,254,000 - 2,693.000)	$ 6,561,000
2.	Home district incentive payments (3,000 x $550)	1,650,000
3.	Local revenue increase	1,100,000

In addition, an existing debt service levy of $0.17, scheduled to be retired in February, 1984, could support a new $20,000,000 bond issue amortized over twenty years without an increase in property taxes, according to this Court's financial adviser.

Finally, a recommendation by the proponents that the City Board be directed not to reduce its operating levy equal to one-half of sales tax revenues under the recently approved state-wide referendum (Proposition C), Mo. Rev. Stat. § 164.013, could generate an estimated $9,254,000, according to the financial adviser. *See, e.g.*, Mo. Rev. Stat. § 164.013, providing that a property tax rollback not occur until school boards make "any other adjustments that may be required by any other law."

Assuming these estimates do not turn out to be overly optimistic, it is entirely possible that the City Board could have at its disposal in 1983-1984 more than $38,000,00 for implementing its share of the Settlement Plan without the necessity for increasing the current property tax rate within the City of St. Louis. The Court is aware these estimates assume that anticipated tax decreases of $0.17 (scheduled bond issue retirement) and approximately $0.58 (property tax rollback equal to one-half of sales tax revenues under Proposition C) will not occur as scheduled. The Court also notes that, pursuant to State law, a bond issue requires a two-thirds majority vote for passage.

Should a tax increase become necessary, available alternatives noted by the financial adviser include the following:

A. Increase the total rate by $1.71. This was approved by 51% of St. Louis voters in June 1982.	$26,505,000
B. Increase the total rate by $1.83 to equal the average rate of St. Louis County districts.	28,365,000

C. Increase City tax rates in three funds to equal average adjusted, pupil-weighted ratios in St. Louis County:

1. Teacher fund (65 cents more)	10,075,000
2. Building fund (11 cents more)	1,705,000
3. Debt service fund (12 cents more)	1,860,000

No one likes to pay the piper, but sooner or later it must be done. Mark Twain told the Public Education Assiciation in 1900:

> the [Russian] Government had decided that to support the army it would be necessary to withdraw the appropriation from the public schools. This is a monstrous idea to us. We believe that out of the public school grows the greatness of a nation.
>
> It is curious to reflect how history repeats itself the world over. Why, I remember the same thing was done when I was a boy on the Mississippi River. There was a proposition in a township there to discontinue public schools because they were too expensive. An old farmer spoke up and said if they stopped the schools they would not save anything, because every time a school was closed a jail had to be built.
>
> It's like feeding a dog on his own tail. He'll never get fat. I believe it is better to support schools than jails.

"Great American Speeches, 1893-1963," at 23, edited by John Graham, Meredith Corporation, copyright 1970.

The following financing plan shall be implemented:

1. The City Board shall certify to the Court, by July 15, 1983, the amount needed to meet its share of the costs of the Settlement Plan and the tax rate necessary to fund these costs along with its other obligations;

2. The City Board shall submit to the voters by February 1, 1984, a proposed bond issue of an amount determined by City Board as sufficient to meet the most pressing capital improvement needs of the City schools, as identified in Exhibit 2 as part of City Board's constitutional obligation to desegregate.

3. Should the bond issue fail to obtain the required two-thirds majority, the Court will consider an appropriate order to obtain the funds reasonably necessary to meet the capital expenditures incurred by City Board in meeting its constitutional obligation to desegregate.

4. The City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis on July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Mo. Rev. Stat. § 164.013. The amount of revenue retained by City Board by reason of not reducing its operating levy in the City of St. Louis pursuant to Mo. Rev. Stat. § 164.013 shall be utilized to fund programs under the Settlement Plan that are implemented to meet City Board's constitutional obligation to desegregate the City's public schools. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984.

5. In the event the above steps fail to raise the necessary funds to satisfy the City Board's share of the implementation costs, the Court will enter an appropriate order, following notice and an opportunity to be heard on the amount, to increase the property tax rate in the City of St. Louis by an amount necessary to fund the City Board's share of the costs of the Settlement Plan.

IV.

Conclusion

If we have been sufficiently honest and open-minded in recognizing our problems, and

If we have been sufficiently creative in conceiving new solutions, and

If we are now sufficiently purposeful in putting those solutions into effect,

We can reach our goals.

The history of American education is the long, turbulent record of a nation that was not afraid to risk failure or trouble or confusion in pursuit of a goal that at first seemed wildly impractical: to give every American child a chance to develop to the limit of his or her ability.

Life never was a series of easy victories. We cannot win every round or arrive at a neat solution to every problem. But driving, creative effort to solve problems is the breath of life, for a civilization or an individual. John W. GArdner, *No Easy Victories,* chapters 5, 12, 14, at 30, 67, 78 (1st ed. 1968).

"This [plan] is not perfect, but the sun has its spots, a diamond has its flaws, gold will not rust, and the good will shine through." Congressman Emanuel Celler, Brooklyn, New York, 1888-1981, (Member of Congress 1923-1973).

Dated this 5th day of July, 1983.

William L. Hungate
United States District Judge

APPENDIX A

I. Intradistrict Phase

In 1972, Liddell plaintiffs, on behalf of black children eligible to attend or attending the City's public schools, as well as their parents, initiated this lawsuit as a class action against the Board of Education of the City of St. Louis (City Board). Liddell alleged that the City Board and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis in violation of plaintiffs' rights under the fourteenth amendment. The Court certified this plaintiff class by order dated October 3, 1973.

In 1977 the Court granted Caldwell representatives, including the NAACP, the Adams group, the City of St. Louis, and the United States leave to intervene as plaintiffs in this case. The Court, upon several parties' motion, also added the State of Missouri, the Commissioner of Education of the State of Missouri, and the State of Missouri Board of Education as parties defendant. In 1980, upon several parties' motion, the Court added as parties defendant: the Governor, the State Attorney General, the State Treasurer, individual members of the State Board of Education, the Commissioner of Administration of the State of Missouri, and the Special School District of St. Louis County.

In 1980, the City Board and State of Missouri were found liable for the establishment and maintenance of a racially segregated public educational system within the City of St. Louis, in violation of plaintiffs' constitutional rights. *Adams* v. *United States,* 620 F.2d 1277 (8th Cir.)(en banc), *cert. denied,* 449 U.S. 826 (1980); *Liddell* v. *Board of Education,* 491 F.Supp. 351, 357, 358, 359-60 (E.D. Mo. 1980), *aff'd,* 667 F.2d 643, 654-55 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981). To remedy this constitutional violation, the district court ordered the implementation of a mandatory desegregation plan

within the City of St. Louis public school system, with funding for implementation of this plan shared equally by City Board and State. *Liddell, supra,* 491 F.Supp. at 353. Additionally, the Court directed City Board and State defendants to develop and submit plans to alleviate the segregated conditions through interdistrict transfers between the City and suburban school districts. *Id.* at 353-54. *See also Adams, supra* at n.25 and n.27 at 1294-95 and accompanying text, 1296 (noting expert's opinion that interdistrict transfers would result in most stable desegregation plan); *Liddell, supra,* 491 F.Supp. at 356 (noting district court's and parties' general agreement with the appellate court's finding that "based upon the evidence, an interdistrict remedy has the best chance of permanently integrating the schools in the metropolitan St. Louis Area"). In accordance with its 1980 remedial order, the district court has already approved implementation of two interdistrict plans:

(a) the 12(a) voluntary plan involving transfers among fifteen St. Louis County school districts and the City school district, with funding provided by the State alone, Order H(226)81, dated July 2, 1981, *aff'd, Liddell* v. *Board of Education,* 677 F.2d 626, 629-30 (8th Cir.), *cert. denied,* 103 S.Ct. 172 (1982); and

(b) the 12(b) vocational education plan involving transfers between the City school district and the Special school District of St. Louis County, with funding provided by the State, the Special School District, and City Board, Order H(181)81, dated June 11, 1981, *aff'd, Liddell, supra,* 677 F.2d at 632-39.

This litigation is now in the 12(c) interdistrict phase, which involves mandatory interdistrict efforts to remedy the segregated conditions found to exist within the City. With regard to this phase of the case, the United States Court of Appeals for the Eighth Circuit has recently stated that:

> the district court can require existing defendants—the state and the city school board—to take the actions which will

help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict transfer.[39] To the extent that suburban schools are willing to cooperate, the plans requiring their participation can now go forward.

---

[39] These possible remedies are given as examples only. They are not intended to represent an exhaustive list. The district court may adopt other remedies that are appropriate.

Liddell, supra, 677 F.2d at 641-42.

II. **The Interdistrict Litigation.**

By Order H(337)81, the Court permitted City Board and Caldwell to file their interdistrict claims and to add certain parties defendant. The added defendants include St. Louis County, certain St. Louis County government officials, and the following St. Louis County school districts: Affton, Bayless, Brentwood, Ladue, Lindbergh, Hancock Place, Hazelwood, Jennings, Maplewood-Richmond Heights, Mehlville School District R-9, Normandy, Parkway, Riverview Gardens, Rockwood,

Valley Park, Webster Groves, and Wellston. The St. Louis County school districts of Clayton, Ferguson-Florissant, Kirkwood, Ritenour, Pattonville, and University City are subject to stay orders and have not been added as defendants at this time. The Court also stayed litigation as to St. Charles and Jefferson Counties, including each school district in those counties, and as to certain housing authorities. On September 24, 1981, the Court granted City Board's motion for realignment as a plaintiff in the interdistrict phase of the case only.

City Board's crossclaim and Caldwell's amended, supplemental, and cross complaint for interdistrict desegregation are similar. In general, they seek:

(a) declaratory relief that defendants' acts and conduct are "unconstitutional and unlawful,"

(b) injunctive relief for the development and implementation of a remedial plan, and

(c) an award of attorney's fees and expenses.

The pleadings assert that defendants perpetuated and expanded, with "segregative intent" and "segregative impact" a metropolitan-wide racially dual public educational system that was created pursuant to state constitutional and statutory authority before the United States Supreme Court decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). They further contend that named defendants have not met their claimed post-*Brown* duty to dismantle this racially dual interdistrict educational system. To support these contentions, the City Board and Caldwell pleadings point to student assignment patterns, faculty salary differences, governmental funding decisions, discriminatory housing and land use policies, failures or refusals to consolidate school district boundaries, among other alleged acts or omissions of defendants. Caldwell also alleged that it brought its claims on behalf of students and their parents within the metropolitan area.

For these claims, City Board and Caldwell define the "St. Louis Metropolitan Area" to include St. Louis City, St. Louis County, St. Charles County, and Jefferson County.[1] Since stay orders have been entered against St. Charles and Jefferson Counties and named defendants therein, the "St. Louis Metropolitan Area," as artificially defined for purposes of this case, is now limited to the geographic area encompassed by the boundaries of St. Louis City and St. Louis County. *See* Order H(337)81, dated August 24, 1981; *see also* H(1183)82, dated August 6, 1982; H(1985)83, at 4, ¶ 1, dated January 25, 1983. These plaintiffs assert that the causes of action arise from "the equal protection" provisions of 42 U.S.C. § 1983 and the thirteenth and fourteenth amendments; the "full and equal benefit" provisions of 42 U.S.C. § 1981 and the thirteenth amendment; the real property rights of 42 U.S.C. § 1982; and the protection afforded to federally funded programs by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

The active defendants denied the alleged constitutional violations. Defendants would have presented evidence in an attempt to show: that a metropolitan-wide racially dual public educational system never existed; that if such a system ever existed it had been fully dismantled; that after *Brown* each St. Louis

---

[1] When we speak of the St. Louis metropolitan area, we are plagued with imprecise terms. The commonly used definition of the Office of Management and Budget of the St. Louis Standard Metropolitan Statistical Area (SMSA) includes St. Clair, Madison, Jersey, Monroe and Clinton Counties in Illinois. Under proper circumstances, federal courts may order intracity school desegregation, and they may, under proper circumstances, perhaps order intercounty school desegregation. This Court is unaware of precedent for interstate school desegregation. So referring to the St. Louis metropolitan area, which ordinarily includes a part of Illinois, is not altogether useful.

Franklin County, Missouri, qualifies under the standard definition of the St. Louis SMSA, and for undisclosed reasons, plaintiffs did not seek to join Franklin County, Missouri.

County school district had established a unitary school system; and that the remedy sought by plaintiffs would not have been supported by the violations, if any, that might have been found.

The class action issues in this phase of the case were referred to United States Magistrate David D. Noce pursuant to 28 U.S.C. § 636(b)(1)(A). After three days of hearings, the Magistrate recommended in relevant part that:

> "(a) the NAACP amend its pleadings within seven days only to the extent necessary to satisfy standing requirements for an organizational plaintiff; if such amendment is not made, the NAACP should be dismissed as a plaintiff-intervenor for failure to satisfy the standing requirements;
>
> (b) Lillie Mae Caldwell satisfies the standing requirements necessary to pursue this litigation as a plaintiff-intervenor; Minnie Liddell, Lois LeGrande and Samuel Yarber, as parents of children in the public school system, satisfy standing requirements to pursue this litigation as Liddell plaintiffs; the children of these remaining named Liddell plaintiffs should be substituted for the children on whose behalf these remaining Liddell plaintiffs were originally named as next friends;
>
> (c) the Liddell class, as originally certified, may continue to prosecute this litigation; and
>
> (d) the interdistrict claims set forth in the amended complaint of Caldwell plaintiff-intervenors, H(351)81, are properly maintained as a class action under rule 23(a) and 23(b)(2). The District Court should certify the Caldwell class as comprising all students, and their parents, now attending or who will attend Missouri public primary and secondary schools located in the metropolitan St. Louis, Missouri area."

After due consideration for defendants' objections to Magistrate Noce's Report and Recommendation and for Caldwell's motion to amend its pleadings, filed in response to that Report and Recommendation, the Court adopted the Report on February 9, 1983, H(2085)83. Also in accordance with Magistrate Noce's recommendation, the proposed substitution of certain named representatives for the Liddell class was subsequently approved. H(2356)83, dated May 4, 1983.

Pursuant to the mandates of the United States Court of Appeals for the Eighth Circuit to proceed with interdistrict liability proceedings, and this Court's order of August 6, 1982, the Court set the 12(c) liability phase of this case for trial on February 14, 1983. As of February 14, 1983, the active St. Louis County school districts included Bayless, Hazelwood, Mehlville, Riverview Gardens, Rockwood, Valley Park, and Webster Groves. The other St. Louis County school districts were subject to stay orders. *See, e.g.*, H(336)81, dated August 24, 1981; H(1365)82, dated September 17, 1982; and H(1978)83, dated January 20, 1983.

Prior to this first trial setting, the Court, *sua sponte*, appointed Professor D. Bruce La Pierre Special Master and director of a settlement conference program for this case only. Thereafter, settlement discussions took place. From time to time, at the request of the Special Master, joined by the parties, the Court postponed the trial scheduled for February 14, 1983, to provide the parties the opportunity to resolve their differences on the pending issues. On February 22, 1983, the settling parties submitted an Agreement in Principle which was approved at that time by each of the proponent plaintiffs and all St. Louis County school districts except Riverview Gardens. The Special Master subsequently, on March 30, 1983, filed a proposed Settlement Plan. By April 4, 1983, the Liddell, Caldwell, and City Board plaintiffs, twenty of the twenty-three St. Louis County school districts, including Riverview

Gardens, and the St. Louis County defendants advised the Court of their unconditional acceptance of the Settlement Plan. One school district, University City, initially declined to sign the Settlement Plan, but accepted it on June 1, 1983. Two school districts, Mehlville and Rockwood, suggested conditions, and the question arises whether those conditions are inconsistent with the Agreement in Principle. Counsel for Rockwood and Mehlville have insisted that these districts are signatories to the Settlement Plan, have accepted that agreement, and are not seeking a modification of it. By their conditions, Mehlville and Rockwood desire either to advise the Court of particular concerns which each has, or to ask the Court to interpret certain parts of the Settlement Plan. The Court declines to give advisory opinions. The State of Missouri, the City of St. Louis, and the United States have advised the Court that they would not sign the Settlement Plan.

The proposed Settlement Plan is limited to the 12(c) phase of this litigation and does not include St. Charles and Jefferson Counties, against which plaintiffs' interdistrict claims have been stayed. *See, e.g.*, H(336)81, dated August 24, 1981; and H(1365)82, dated September 17, 1982. The special education programs of the Special School District will be dealt with hereafter. The proposed Settlement Plan also does not involve the paragraph 12(d) housing issues and the housing defendants against which plaintiffs' claims have been stayed.

III. **Fairness Hearing**

On April 8, 1983, this Court scheduled a fairness hearing to begin April 28, 1983, at which evidence concerning the Settlement Plan was to be presented. The Court's order also provided for publication of notice to plaintiff class members of the proposed agreement and fairness hearing. The notice was published twice in each of thirteen newspapers having circulation throughout the St. Louis metropolitan area, and was sent by registered mail to each person or group who submitted written

comments on the Agreement in Principle in compliance with the relevant Court order. The Court also required that a copy of the proposed Settlement Plan be made available to the public at each school within the St. Louis metropolitan area. In addition to the formal notice provided by this Court, the proposed Settlement Plan received extensive media coverage throughout the St. Louis metropolitan area (*see* Memorandum Decision filed April 28, 1983, with the Order of the same date, H(2343)83, and Exhibit 4 containing a collection of newspaper articles concerning the Settlement Plan). Judging from the public response as evidenced by both the participation at the fairness hearing and the submission of written comments, there was more than sufficient notice to and opportunity for interested citizens to be aware of the relevant issues and/or to convey their respective positions.

At the five-day fairness hearing, the Court heard from both proponents and opponents of the proposed Settlement Plan. The opposing evidence included eleven persons from the local community, some of whom presented statements on behalf of organizations. Furthermore, the Court received forty-two written statements regarding the proposed Settlement Plan from interested citizens and organizations. The Court granted parties until June 1, 1983, to file proposed findings of fact and conclusions of law and received four such pleadings.

APPENDIX B

We are all gravely concerned with the costs involved in coming into compliance with federal constitutional standards in the desegregation of schools. This concern should be placed in proper perspective.

In the book *Inside U.S.A.*, written in 1947, John Gunther wrote of the resourcefulness with which Missourians can address educational problems:

"Negroes call Missouri a 'southern state with northern exposure.' It was a slave state in 1860, and laws prohibiting intermarriage between black and white are on the books. Segregation is the rule in schools, theaters, restaurants, and hotels; on the other hand there is no Jim Crow in transportation. Conductors on southbound trains try, however, to persuade Negroes to sit in the same car, to save the trouble of moving them into a Jim Crow Coach when the South proper is reached.

"The most interesting over-all aspect of the Negro issue in Missouri is in education. The situation is moderately complex. The University of Missouri at Columbia refuses (like all southern state universities)[1] to admit Negroes. The University of Kansas at Lawrence, Kansas, does admit them. The University of Kansas City (Missouri) does not admit Negroes, nor does Washington [University] in St. Louis. St. Louis University (Catholic) does. At Jefferson City, some thirty miles from Columbia, is Lincoln, a state university exclusively for Negroes. In 1936 a Negro named Lloyd Gaines, on being graduated from Lincoln, applied for admittance to the University of Missouri law school. He was refused. He thereupon sued the university. The case reached the Supreme Court, which in 1939 made a[n] historic ruling, to the effect that the state of Missouri was obliged to give its citizens, white or Negro, equal educational facilities. But a loophole continued to exist, whereby the state could pay the tuition of a Negro at some institution *outside* the

---

[1] "In Missouri for the first time in these pages we touch the South. This is emphatically a border as well as a middle western state. 'Missouri would lose something if the Civil War were ever entirely settled,' wrote the Kansas City *Star* not long ago. The Missouri boot heel digs directly into what is veritably the 'old' South, and one region is called 'Little Dixie.' Missouri came into the union as an offset to Maine. The War Between the States split it savagely asunder; it gave 118,000 troops to the Confederate army, 116,000 to the federal. In blunt fact the Bushwhackers and others in Missouri fought their own Civil War, within the state's own frontiers, and traces of this still show." (footnote omitted.)

state, instead of admitting him to one of its own white schools; this is the reason why so many Missouri Negroes go to the University of Kansas. But the Gaines case made further action necessary. Missouri was forced to set up a branch of its law school *for Gaines alone,* in St. Louis!—in order that the campus at Columbia should continue to remain lily white. This must be the only case in history of a school designed for a student body consisting of one person. Gaines, however, did not appear in St. Louis to take up his unique position.

"Then a lively young girl named Lucile Bluford, at present on the staff of the Kansas City *Call,* applied for admittance to the University of Missouri school of journalism, which is incidentally one of the best in the nation. The registrar did not recognize her application as being from a Negro, and she was accepted. Then, when the school term opened and she arrived on the campus, she was promptly informed that she could not, of course, be admitted. Miss Bluford renewed her application, was refused, and then sued the university. To evade implications of the suit, the state then set up a separate school of journalism at Lincoln—which still exists—again with the intent of keeping, at all costs, any Negroes from infecting the home campus. This segregated school of journalism had only five or six students to begin with; yet it had to be specially maintained with a staff of teachers and the like. Miss Bluford, however, would not attend the ersatz school. It was set up for undergraduates and she was qualified to be a graduate student. So she applied for admittance to the university's graduate school. Again she was refused. So she filed another suit. Fearing to lose the suit, in which case it would have had to accept her, the university proceeded to abolish (temporarily) its own graduate school of journalism.

"Lest this whole episode appear purely incredible, as well as asinine, we should point out again that Missouri is a border state. When we reach the South it will become clearer why such monstrous procedures continue to exist." John Gunther, *Inside U.S.A.*, ch. 22, pp. 354, 356-67 (1st ed. 1947).

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

ORDER

(Filed Aug. 18, 1983)

This matter is before the Court on the motion for stay filed by the City of St. Louis, H(2591)83, dated August 15, 1983, regarding an order entered by this Court on July 5, 1983.

This is the third request for a stay directed to the Court's order approving the Settlement Plan. On July 26, 1983, the State defendants applied for a stay pending their appeal. H(2534)83. The next day the Court esablished a deadline of August 9, 1983, for responses to that application, and set the matter for oral argument at the next regularly scheduled motion day, on August 10, 1983. H(2541)83. In response, St. Louis County government defendants filed their motion for stay on August 8, 1983, H(2551)83. At the regularly scheduled motion day, at which counsel for the City of St. Louis was present, the Court heard oral argument on both requests for stay and responses thereto. The Court, upon request, also heard argument of counsel for parties who had not previously filed written statements addressing the stay issues.

Prior to August 15, 1983, the City of St. Louis filed no written statement regarding the requests for stay filed by State defendants and St. Louis County government defendants. Such a written statement might have joined in or opposed those requests, or could have sought a stay on behalf of the City of St. Louis itself. Although present in Court, counsel for the City of St. Louis stood mute as the Court heard oral argument on the pending requests for stay.

Now, with the scheduled start of school only two weeks away, six weeks after entry of the relevant Court order, and after two prior requests for stay (directed to that order) have been filed, argued, and decided, the City of St. Louis files a third request for a stay. In view of all the circumstances here presented, the Court reaffirms its adherence to the mandate of the United States Court of Appeals for the Eighth Circuit that the district court countenance no excuse for further delay. *Liddell* v. *Board of Education,* 667 F.2d 643, 651 n.6 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981).

As to the City's alternative request, it is not this Court's practice to render advisory opinions.

Having carefully considered this matter,

IT IS HEREBY ORDERED that the motion for stay of the City of St. Louis, H(2591)83, be and the same is denied.

Dated this 18th day of August, 1983.

William L. Hungate
United States District Judge

APPENDIX C
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(4)

CRATON LINDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,
Defendants.

SETTLEMENT AGREEMENT

Table of Contents

I. Purpose and Definitions

II. Voluntary Interdistrict Transfers

III. Magnet Schools

IV. Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Quality in Non-Integrated Schools

V. Part-time Educational Programs

VI. Faculty

VII. Parent Involvement

VIII. Transportation

IX. Administration

X. Finance

XI. Other Provisions

XII. Stay

Signatories to the Settlement Agreement

Appendix — Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Quality in Non-Integrated Schools.

I. Purpose and Definitions

A. Purpose

This detailed implementation plan is submitted by the signatories as an agreement to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims [H(348)81, as amended; H(351)81, as amended; and H(1027)82, as amended] and to implement the Agreement in Principle H(2141)83 as required by the Court's Orders H(2142)83, H(2214)83. The establishment of programs and the funding of this settlement agreement is under the authority of paragraph 12(a) of the May 21, 1980 Order as amended as well as the orders and decisions relating thereto and the provisions contained in this agreement. The Agreement in Principle provides:

AGREEMENT IN PRINCIPLE

FIVE BASIC ELEMENTS OF A FINAL SETTLEMENT

In reviewing the five basic elements of the proposed final settlement, two preliminary points bear special mention. First, the five basic elements are at best statements of broad principles, and many significant subsidiary issues and details still must be resolved even if the parties reach an agreement on the major princples. Second, there are four critical propositions that have not yet been incorporated in five elements and that would be incorporated explicitly in a final settlement: (1) no court-ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability, (2) the 23 suburban school districts in St. Louis County will continue to exist, and (3) the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be ordered by the Court, (4) black students in suburban school districts that have a minority enrollment of 50% or greater would enjoy the transfer rights.

1. **The suburban school districts in St. Louis County would agree to accept black transfer students up to their Plan Ratio within 5 years.**

a. Under the Plan Ratio, which is employed in the 12(a) voluntary plan, a suburban school district would accept up to as many black transfer students was would constitute 15 percent of the total student population in that district, but no suburban school district would be required to accept more black transfer students than would raise the overall percentages of blacks in the total student population higher than 25 percent. The effect of the Plan Ratio may be illustrated by considering several hypothetical suburban school districts with different existing racial ratios. If Suburban School District X has a student population that is 3% black, it would accept up to as many black transfer students as would constitute 15% of the total student population in District X and the percentage of black students in District X would then be 18%. If Suburban School District Y has a student population that is 10% black, it would accept up to as many black transfer students as would constitute 15% of the total student pouplation in District Y, and the percentage of black students in District Y would then be 25%. If Suburban School District Z has a student population that is 15% black, it would accept up to as many black students as would constitute 10% of the total student population in District Z and the percentage of black students in District Z would be 25%. If a Suburban School District has a student pouplation that is already 25% or more black, it would not be required to accept any black transfer students.

b. All student transfers under this element shall be voluntary.

c. This first element of the settlement would provide an oportunity for a substantial number of black students in the city to attend school in the county. On the basis of Fall 1980 data, application of the Plan Ratio to all twenty-three suburban school districts would provide an opportunity for approximately 17,500 black students to transfer to county schools. This estimate is probably too high because there has been a decline in total student enrollment and an increase in black enrollment after 1980, and 15,000 is a reasonable working figure.

d. One significant distinction between this first element of the settlement proposal and the 12(a) plan should be noted. Under the 12(a) plan, a suburban school district can refuse to accept black transfer students if it does not have "space available" even if it has not yet reached the Plan Ratio. There is no "space available" condition on interdistrict transfers under the proposed stettlement.

e. Each school district will adopt academic and disciplinary standards to assure equitable treatment of all students.

2. **Establishment of Magnet Schools.**

a. New magnet schools in addition to the magnet schools established under the intradistrict order and under the 12(a) plan would be created.

(b) In addition to providing special education programs for city students, the purpose of the magnet schools is to attract white transfer students from the county. If white students transfer to city magnet schools, there will be an opportunity to provide desegragated education for a larger number of black children (approximately 15,000 black students would remain in all one-race schools even if 15,000 black students

transferred to county schools), and there would be greater equity in the assignment of the burdens of transportation.

c. Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings. The final settlement agreement will describe with specificity magnet programs and their locations.

3. **Improvement of the quality of education provided by the city school system and special provisions to improve the quality of education for students in one-race schools.**

a. The settlement will contain specific provisions for improving the quality of education provided by the city school system and for restoring its AAA rating. No exhaustive list of specific provisions has been drafted yet, but reduction of the pupil/teacher ratio to the state's standard for an AAA rating or to county average, whichever is lower and an early childhood (birth to age 4) education program suggested in the past by the State are examples of the type of provisions under consideration.

b. Since there are now approximately 30,000 black children in one-race schools in the city, some of these students will remain in all one-race schools on the north side of St. Louis even if 15,000 black students transfer to county schools and other students attend integrated magnet schools. The settlement plan will include special provisions to improve the quality of instruction received by black students who attend one-race schools.

c. Several recent reports and documents provide a basis for assessing the needs of the city school system. *See* Desegregation Monitoring and Advisory Committee, The Effects of the City Board's Budget and Staff Reductions on the Implementation of the Desegregation Plan, January 24, 1983 [H(1982)83]; City Board's Motion to Order Adjustments in the State Funding of the Desegregation Plan [H(1979)83]. The State's report on the AAA rating of the city school system will also provice [sic] information about needs. These reports and documents coupled with the efforts of the plaintiffs will provide a basis for drafting specific provisions to improve educational quality.

4. Provisions to ensure that the proposed settlement will be carried out fully and fairly and that it will have a substantial impact.

a. It will include (1) provisions requiring the suburban school districts to recruit black transfer students from the city and to promote voluntary transfers of white county students to city schools and (2) provisions requiring the plaintiffs to promote interdistrict transfers and, (3) non-enforceable annual targets by each school district for achieving the Plan Ratio.

b. It will also include fiscal incentives designed to encourage interdistrict transfers.

c. All districts will adopt procedures to ensure equitable treatment of all students.

d. **FACULTY**

1. Goal: Each school district shall establish goals whereby the percentage of blacks employed as (1) teachers and (2) administrators shall equal a percentage based on the actual ratio of black and white personnel in each of such categories

presently employed or on leave of absence in the city and suburban school districts or the ratio of such black and white personnel as established by a labor market study.

2. The goal would be accomplished through the development of an enforceable affirmative plan which shall include provisions for recruitment of black personnel and yearly hiring ratios. (1:1, 1:2, 1:3, etc.). Departures from such ratio may be justified, among other grounds, if a district demonstrates that it has hired the best qualified candidate for any position.

3. Means: (A) Normal hiring — subject to state law.

(B) Incentives for voluntary teacher transfers.

(C) If necessary, allocation by the Court of fiscal incentive funds (that would not be available to suburban school districts but for the settlement plan) to the hiring of minority teachers.

4. Obligations under this provision shall terminate at such time as either the hiring or pupil goals have been achieved.

e. The City Board would be invited to join the Cooperating School Districts for the St. Louis Suburban Area, Inc.

f. An annual report will be filed with the Court concerning the steps taken to implement the settlement.

g. The final settlement plan shall recognize

(i) That the State will, within the limits of its authority, encourage the construction of hous-

ing which shall advance the integration of neighborhoods, and

(ii) that the parties with housing responsibilities shall not take any action to interfere with the implementation of this settlement plan.

*** As to the housing issue, there is no agreement between the State, the County, and the City Board, the Caldwell and Liddell Plaintiffs.

[Statement made by Special Master in Court]

h. Voluntary transfer students under this settlement plan shall not be assigned by the receiving district in a manner that contributes to racial segregation within the district.

i. An agreement in principle to identify options for students in majority black schools within school districts that are not predominately black to enjoy transfer rights within the district comparable to those that exist in the predominantly black county districts.

5. **STAY**

1. Litigation will be stayed for five (5) years to permit full implementation of voluntary transfers, magnet schools, quality education, whatever teacher provisions — in essence, a stay while implementing elements 1, 2, 3 and 4. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

2. Goal: The goal is a minority enrollment of 25% for districts that currently have less than a 25% minority enrollment.

3. **If a district reaches the PR within five years,** it gets a final judgment declaring that it has satisfied its pupil desegregation obligations. The plaintiffs agree to seek no

further pupil desegregation relief through litigation. The school district's only continuing obligation is to comply with the specific obligations stated in elements 1, 2, 3 and 4, and to make continued efforts to reach the goal stated in paragraph 2. The Court would relinquish active supervision two years after the five-year period.

4. **If a school district does not reach the PR**, then

(a) Monitor will begin to prepare reports and recommendations, based on hearings at which all interested parties shall have the opportunity to be heard, in September of the fifth year so that the reports, the recommendations, and the negotiation process can be completed by the end of the fifth year.

(b) Parties will negotiate;

(c) Only after (a) and (b) can plaintiffs renew the litigatfon, in which case

(i) they must prove liability, and

(ii) they agree not to seek school district consolidation or reorganization and they agree not to seek a remedy beyond the 25% goal of paragraph 2, and any remedy would distribute the burdens of desegregation equitably, between the minority and the non-minority students in the school districts in the litigation under this paragraph.

(iii) In devising any remedy the Court would consider the monitor's report and it would be entitled to weight.

The Court's approval of any agreement shall determine that the Liddell, Caldwell, and the City Board Plaintiffs are entitled to "reasonable" attorney's fees and costs of litigation to be paid exclusively by the State after full hearing on attorney's fees.

B. Definitions

For purposes of this settlement agreement, the following terms are defined below:

"Enrolled' refers to those students that are enrolled in the participating districts' public schools.

"Home District" means the participating district which is the district of residence of the student transferring to another district pursuant to this plan or the district of employment of a teacher or administrator who transfers to another district pursuant to this agreement.

"Host District" is the participating district which receives a student, teacher or administrator who transfers from another district pursuant to this agreement.

"Participating District" means those school districts that are signatories to the agreement.

"Students" means kindergarten, full time elementary and full time secondary students in public schools in the City of St. Louis and St. Louis County, unless the term is specifically designated to refer to non-public school students. For the purpose of permitting voluntary interdistrict transfers by county pre-school children to the city and for the purpose of education of city pre-school children pursuant to Parts III and IV, the term "students" also includes pre-school students.

II. Voluntary Interdistrict Transfers

A. Plan Goal and Plan Ratio

1. **Definitions**
   a. The "Plan Goal" is a racial ratio fo 25% black students and 75% white students.

   b. The "Plan Ratio" is an increase of black student enrollment of fifteen percentage points or achievement of the Plan Goal, whichever is less.

2. **Plan Ratio and Plan Goal for Each Participating District.**

a. The calculation of the plan ratio and the plan goal for each participating district is based on total resident enrollment and black resident enrollment) as of September 30, 1982 (State Report Date). Total resident enrollment for each participating district includes tuition students, and white resident enrollment includes non-black minority students. Transfer students under the 12(a) plan are not included in the resident enrollment data. Transfer students under the 12(a) plan are counted separately as part of a participating district's efforts to achieve its plan ratio and plan goal under this settlement agreement. The plan ratio and the plan goal of each participating district stated in subsections b. - c. are based on the percentage of black resident students enrolled in that participating district on September 30, 1982. The plan ratio will be used to calculate, on the basis of then current enrollment data and as set forth in section 4, the number of interdistrict transfer students that each participating district must accept.

b. The plan ratio and the plan goal of each participating district in which the black resident student enrollment was less than twenty-five percent on September 30, 1982 are:

Participating Districts	Plan Ratio	Plan Goal
Affton	15.15% Black	25.00% Black
Bayless	15.15%	25.00%
Brentwood	25.00%	25.00%
Clayton	16.27%	25.00%
Hancock Place	15.34%	25.00%
Hazelwood	25.00%	25.00%
Kirkwood	25.00%	25.00%

Ladue	25.00%	25.00%
Lindbergh	15.79%	25.00%
Mehlville	15.32%	25.00%
Parkway	16.98%	25.00%
Pattonville	18.72%	25.00%
Ritenour	25.00%	25.00%
Rockwood	15.95%	25.00%
Valley Park	15.48%	25.00%
Webster Groves	25.00%	25.00%

c. The plan ratio does not apply to participating districts in which the black resident student enrollment exceeded twenty-five percent on September 30, 1982.

i. Participating districts (with their percentage black enrollment as of September 30, 1982) in which the black resident student enrollment exceeds fifty percent are: Jennings (55.10% black), Normandy (86.92% black), St. Louis City (79.47% black), University City (77.15% black), and Wellston (99.45% black). At the time this settlement agreement is approved by the Court, these participating districts, other than the City of St. Louis, are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under VI A-H. The continuing obligations of these participating districts, other than the City of St. Louis, shall be limited to the establishment of such magnet programs designed to increase white student enrollment and to cooperation in the recruitment process to facilitate the transfer of black students enrolled in their district to participating districts whose enrollment is less than twenty-five percent black, consistent with the provisions of Parts II and III.

ii. Participating districts in which the black resident student enrollment exceeds twenty-five percent but is less than fifty percent are: Ferguson-Florissant (40.55% black), Maplewood-Richmond Heights (28.97% black) and Riverview Gardens (42.60% black). At the time this settlement agreement is approved by the Court, these participating districts are entitled to a final judgment that they have satisfied their pupil desegregation obligations and are not covered by the affirmative action faculty obligations under Section VI A-H. The continuing obligation of these participating districts shall be limited to cooperation in the recruitment process, consistent with the provisions of Part II, to facilitate the transfer of white students enrolled in their district to participating districts whose enrollment is greater than fifty percent black and to facilitate the transfer of black students in their district pursuant to Section XIF hereof. If the black enrollment in any one of these three districts should exceed fifty percent, then its black students would enjoy transfer rights under Section II, and the participating district would be subject only to the two obligations assumed under subsection c(i) by participating districts in excess of fifty percent black enrollment as of September 30, 1982.

3. Implementation of the Plan Ratio and the Plan Goal by Participating Districts and Determination of Annual Targets.

a. Unless its plan ratio is achieved earlier, each participating district identified in section 2b, at the time it prepares enrollment estimates for the next school year but not later than a time to be specified by the Recruitment and Counseling Center, shall:

i. estimate the total resident enrollment to be reported on the State Report Date, white resident enrollment (number and percentage) and the number of voluntary transfer students who will continue as students in the participating district.

The total resident enrollment figure shall include tuition students. The resident white enrollment figure shall include all non-black minority students, but it shall not include voluntary transfer students. The term "voluntary transfer students" includes all students who transferred to another district under the 12(a) plan or who transfer to a participating district under this settlement agreement. Such white voluntary transfer students shall be included in the enrollment figures of the participating district in which they actually attend school. The resident black enrollment figure shall not include black voluntary transfer students;

ii. estimate the number of black voluntary transfer students necessary to achieve its plan ratio established by section 2b. according to this formula:

$$\frac{X+Y}{X+Y+Z} = \text{Plan Ratio}$$

In this formula, X represents the number of black voluntary transfer students necessary to achieve the participating district's plan ratio, Y represents the number of black resident students as determined under subsection a(i), and Z represents the number of white resident students as determined in subsection a(i). After the number (X) of voluntary black transfer students necessary to achieve the plan ratio is determined,

this number is then reduced by the number of black voluntary transfer students who have previously transferred into the participating district and who will remain enrolled in the participating district in the next school year; and

iii. establish annual targets for achieving the plan ratio in each of the remaining years. For each year prior to the fifth year of this settlement agreement, each participating district shall determine its own annual targets based on its plan ratio, and each participating district may state preferences for particular numbers of students at particular grade levels that the Recruitment and Counseling Center may consider, in addition to the prior achievement of the plan goal by any pareticipating district, in assigning voluntary transfer students to participating districts in a manner consistent with the voluntary transfer student's rights to choose particular participating districts and schools. Each year each participating district shall report its annual targets and preferences to the Recruitment and Counseling Center. These annual targets for achieving the plan ratio are non-enforceable.

b. Each school year each participating district identified in section 2b, unless it has a plan ratio lower than its plan goal and has not yet achieved its plan ratio, shall calculate separately the number of black voluntary transfer students necessary to achieve its plan goal for non-enforceable annual targets for achieving its plan goal. This calculation shall be done consistently with the methods established in subsection a, except that the plan goal shall be substituted for the plan ratio in the formula set out in subsection a(ii).

c. Each school year each participating district identified in subsection c(i) of section 2 shall calculate the number of white voluntary transfer students necessary to achieve its plan goal and non-enforceable annual targets for achieving its plan goal.

4. **Determination of Achievement of a Participating District's Plan Ratio**

a. At the end of each school year during the first five years of this settlement agreement, each participating district identified in section 2b. shall determine on the basis of enrollment data as of the last day of school prior to graduation the percentage of black student enrollment according to the following formula:

$$\frac{A+Y}{A+Y+Z} = \text{Percentage Black Student Enrollment}$$

In this formula, A represents the actual number of black voluntary transfer students attending a school in the participating district, Y represents the actual number of black resident students deterined consistently with section 3a(i), and Z represents the actual number of white resident students determined consistently with section 3a(i).

b. The actual percentage of black student enrollment as calculated under subsection a shall be employed under Section XII in determining whether a participating district has equalled or exceeded its plan ratio established in section 2b.

B. **Eligibility and Priorities Regarding Interdistrict Transfers Other Than To Magnet Schools and Programs**

1 .**Purpose**

The purpose of this provision is to assure opportunities for interdistrict transfer for black students in the City of

St. Louis who have obtained an intradistrict judgme against the City Board and the State relating to the City St. Louis and for black students in predominantly bla school districts who have had asserted on their behalf claim for interdistrict relief in the pending litigation.

Eligibility

a. Black students who are members of the racial majo ity at a school in any participating district whi district is 50 percent or more black in its enrollme shall be eligible to transfer voluntarily to a school a district in any other participating district in whi school and district they would be in the racial mino ity on the conditions set out in Section II.B.3. T provisions of Section II shall govern the operation these voluntary interdistrict transfers.

b. White students who are members of the racial majo ity at a school in a participating district which distri is more than 50% white in its enrollment shall be eli ible to transfer voluntarily to a school and district which they would be be in the racial minority.

c. Students who have demonstrated disruptive behavi in their home district will be prohibited from volu tary interdistrict transfer. Prior to the transfer of a student the home district shall issue a statement th the transferring student is in good standing and h no record of recent disruptive behavior which wou interfere with the operation of the program.

d. Students who apply for interdistrict transfer who a currently withdrawn from school will be evaluated b the Recruitment and Counseling Center and pe mitted to transfer if there is no evidence of disrupti behavior. If there is evidence of prior disrupti behavior, these students may be permitted to transf

on a provisional basis as a probationary transfer student at the discretion of the Recruitment and Counseling Center, subject to no further disruptive behavior.

e. Handicapped students who are served by the Special School District and the City Board who are not Phase I students shall be provided for pursuant to the agreement between the Special School District and the plaintiffs.

f. Transfers are not limited to students in public schools.

3 .**Priorities**

If in any school year, the number of eligible black students applying for interdistrict transfers exceeds the total number of spaces remaining under this settlement agreement, spaces shall be allocated among districts under the following formula:

A calculation shall be made for each majority black district of the number of black students currently attending schools at are 50% or more black in their enrollment. Ratios shall then be established for each district based upon the number of black students attending 50% or more black schools as a proportion of the total number of such students in all majority black participating districts. Spaces shall then be allocated according to the ratio. If the number of applications from any district is fewer than those it would be entitled to under the ratio, the excess spaces shall be redistributed to the remaining districts according to the same ratio.

4. The eligibility and priority provisions contained herein do not apply to magnet schools and programs. Separate eligibility and priority standards for magnet schools and programs are set out in Section III.

C. **Placement of Voluntary Interdistrict Transfer Students**

1 .**Application for Transfers**

a. Each year during a period specified by the Recruitment and Counseling Center, every public school student in St. Louis City and St. Louis County who is eligible to transfer to another district will be asked to indicate if he/she wishes to trasnfer to another district. Eligible white city and county public school students will be provided with information about magnet school offerings in the city and county. Eligible black city and county public school students will be given information about regular schools in predominantly white county districts and all magnet schools.

2 .**Student Choice**

a. If the student wishes to transfer he/she will complete a transfer application and return it to the Recruitment and Counseling Center by a specified date. These applications will be time-stamped and processed by the Recruitment and Counseling Center according to the provisions of this agreement.

b. If a student indicates that he/she wishes an interdistrict transfer to a regular school, the student may:

i. Request that the Recruitment and Counseling Center select the district and school to which the student will be assigned.

ii. Specify up to three choices of school districts and two school choices within each district.

3 .**Actual Assignment to District, School and Grade**

a. Every effort will be made to honor each student's first choice of district and/or school. If a sutdent has in-

dicated no choices, other than the wish to transfer, the Recruitment and Counseling Center will assign students first into those districts with the larger discrepancies between current enrollments and the plan goal.

b. Assignments first will be made according to the spaces in schools and grade levels identified by the host district to achieve its annual target. These will be matched against all choices indicated by the student.

c. If students remain unassigned after the above step, the host district for the student's first choice will be required to take the student as long as the placement will not exceed for that particular grade level 15% of the host district's annual target or exceed the annual target of the host district.

d. If the student cannot be accommodated in the first choice district, the same procedure applied to the first choice district in preceding paragraph c shall be applied to the second choice district if one has been indicated. If the student cannot be accommodated in the second choice district the same procedure will be applied to the third choice district, if one has been indicated.

e. If the student cannot be assigned under these conditions, or if the student does not accept the assignment provided, the student may request that he/she be placed on the waiting list for one particular district. Students on the waiting list will be processed on a first come/first served basis in accordance with the overall placement criteria.

D. Equitable Placement

1. The student's opportunities for success will be the major goal when determining student placement.

2. Voluntary transfer students shall not be assigned by the host district in any manner that contributes to racial segregation.

3. In assigning students to schools, black voluntary transfer students (except those assigned to magnets) shall not be assigned to a school in which the black enrollment exceeds by more than 15 percent the plan goal for the district as a whole.

4. The host district shall honor the grade placement for the student as certified by the home district, which shall be communicated to the parent prior to transfer. Any preliminary evaluation of the student which might suggest modification of the student's placement also will be provided to the host district prior to transfer. If, during the first semsester, testing, performance, remedial efforts, and consultation with all parties in interest indicate that an adjustment of grade placement should be made, it shall be made after the first semester in consultation with the student's parents, and preferrably with parental consent.

5. School districts shall use tests that meet prevailing professional standards and such tests shall be used in accordance with the publisher's instructions.

E. Tenure

1. The commitment to accept a student shall be for the duration of the student's voluntary participation of the plan. Once a student exercises his or her right to participate in the plan, the student will continue in said plan, subject to the provisions of subsection 3, until the student affirmatively withdraws from participation as herein set out. Students will not have to transfer each year or exercise a transfer choice to remain in the host district. Students participating in this

plan shall be encouraged to continue to participate at their initial school of choice. It is expected that the student will follow the pattern of assigned schools for the resident students in the school in which the transfer student first enrolls.

2. Subject to the provisions of subsection 3, students who have elected to transfer under this plan shall remain students of the host district until they choose to return to the district where they reside.

3. Host districts shall not have the authority to remand transfer students to the home district. Host districts shall have the authority to suspend or expel a transfer student using the same due process procedures applicable to resident students.

F. Standards

1. Once admitted, transfer students will be expected to meet the same general standards, academic and other, as applied to students of the host district.

2. Information about each district's academic and disciplinary policies and procedures will be provided to the Recruitment and Counseling Center and made available to prospective transfer students on request. This should include information on pupil-teacher ratios, promotion and retention, counseling assistance, grading, student code of conduct, disciplinary action, and suspension and expulsion.

3. The host district shall respond to the educational needs of students without regard to their status as a transfer or resident student. Transfer students shall be eligible and encouraged to participate in all school programs funded and sponsored by the host district (academic, athletic, extra-curricular and other) and shall not suffer any disability or ineligibility because

they are voluntary interdistrict transfer students. Participation in after-school activities will be facilitated by the provision where needed of extra-curricular buses or other forms of transportation. This provision is not intended to require transportation to or from an evening event that occurs subsequent to and separate from the regular school day.

4. In cases involving suspension greater than ten days in length or expulsions, the Recruitment and Counseling Center shall assist students and their parents in understanding their due process rights.

5. Participating districts shall apply disciplinary standards and procedures in a nondiscriminatory manner and in accordance with the Missouri state laws on suspension and expulsion, Sections 167.161 and 167.171.

III. Magnet Schools

A. Purposes of Magnets

1. Preamble — Unduplicated magnet programs to attract white county students and black students will be established at agreed locations in either the city or the county. No such magnet program would be established in a school district over its objection. City and county school districts would maintain autonomy over their other curriculum offerings.

2. The purposes of including magnet schools and programs are the following:

a. To increase the desegregation of the schools in the Metropolitan area of St. Louis.

b. To provide broader educational opportunities to students in the metropolitan area.

3. Among the assumptions guiding this proposal are the following:

a. A magnet school may be a whole staff, curriculum and facility or a part of a school, as with a magnet program. Magnet schools and programs may also be part time and may serve student populations part time at hours other than the regular school day.

b. Magnets will host students on a city and county-wide basis. Insofar as is supportive of the desegregation effort, students will have an opportunity to attend magnets.

c. No more than 20,000 students may be served by magnets, divided as follows:

i No more than 15,000 from grades 6-12

ii No more than 5,000 from pre-school to grade 5

iii Of the 20,000 students which may be served by magnets, a minimum of 12,000 shall be served by City magnets, and no more than 8,000 shall be served by county magnets.

d. The composition of student enrollment in each magnet school or program shall be 50% black and 50% white, with an allowable variance of not more than plus or minus 10%.

e. Program themes of the magnet list schools established hereunder shall be as diverse as educational planning and imagination allows, but participation of successful study at a magnet school at any level shall not prevent a student from subsequent study in different, regular fields of instruction. Thus, every magnet school shall provide basic and general academic preparation within its own site or in conjunction with nearby schools.

B. Themes

The following magnet schools and programs are authorized but not mandated for 1983-84 and 1984-85. Such list may be rearranged or reduced, but may not be expanded without review and approval by the magnet review committee:

1983-84

CITY	Grade	Target Enroll.
Action Learning and Career Education	K-8	450
Foreign Language Experience School	K-8	275
Classical Junior Academy	2-8	549
Montessori I	Preschool-3	350
Expressive/Receptive Arts	K-8	450
Visual and Performing Arts Middle	6-8	315
Academic and Athletic	6-8	175
Visual and Performing Arts High School	9-12	550
Naval Jr. ROTC	9-12	400
Visual and Performing Arts Center	K-5	485
Individually Guided Ed. I	K-8	415
Individually Guided Ed. II	K-8	450
Health Careers	11-12	300
Math Science and Technology	9-12	475
Academy of Basic Instruction I	K-8	310
Academy of Basic Instruction II	K-8	345
Academy of Basic Instruction III	K-8	410
Investigative Learning Center	K-5	415
Investigative Learning Center Middle	6-8	315
Management Academy	11-12	300
Metro High School	9-12	200
Foreign Language (Roosevelt)	9-12	450
Mass Media (McKinley)	9-12	200
Classical Academy (Soldan)	9-12	150

COUNTY

Print and Broadcast Journalism (Kirkwood)	6-12	100
Extended Opportunity School (Clayton) (night)	9-12	200
Global Studies (Valley Park)	7-12	50
Language Arts Enrichment (Valley Park)	5-6	25
Instructional Media Laboratory School (Webster G.)	9-12	150
Television Production (Webster G.)	9-12	75
Early Childhood Microcomputer Immersion (Webster G.)	K-4	100-110
Microcomputer (Pattonville)	6-8	45-65
School Leadership (University City)	9-11	90
6th Grade Camp (part time) (University City)	6	880
Instrumental Music (summer) (Normandy)	9-12	200
BEST Basic (summer) (Normandy)	7-8	150
Vocational Assessment (after school/ summer) (Normandy)	9-11	100
Computer Math-Language-Vocabulary (Ritenour) (Saturday)	4-6	70

1984 SUMMER

Summer Program for Voluntary Transfers (Parkway)	1-10	400-600
Math and Science (summer) (Normandy)	6-8	100

1984-85 (In addition to 1983-84 List)

CITY

Foreign Language Experience School II	K-8	275
Montessori II	Preschool-3 (replicate)	400
Visual and Performing Arts Middle	6-8 (replicate)	315
Individually Guided Education I	Convert to K-5	415
Individually Guided Education II	Convert to K-5	450
Individually Guided Education	6-8 (New location)	500
Visual and Performing Arts High School (relocate to larger facility)	9-12	1,000
Naval Jr. ROTC (Relocate to larger facility)	9-12	1,000
Military Academy Middle (New Magnet School)	6-8	400

COUNTY

Aerospace Education (Lindbergh)	9-12	400-500
Mobile TV Production & Demo Lab (Wellston)	9-12	12-15
Business and Office Practice (Wellston)	9-12	25
Peer Counseling Institute for Students (Wellston)	?	25
Metals and Foundry (Hancock Place)	9-12	45
Early Childhood Training (Maplewood-Richmond Hgts.)	3-4 yr. olds	100
International Baccalaureate Program (University City)	11-12	100
Aerospace (Normandy)	7-8	200

C. Planning

1. New magnets or expansion of magnets already existing may be provided for the school years 1984-85, 1985-86, 1986-87 and 1987-88 under the provisions of this plan by a process as described in the following paragraphs.

2. The process for approval of new magnets or expansion of existing magnets requires that applications be filed with a magnet review committee which shall have final authority over approval or disapproval of such magnets. The magnet review committee (hereinafter sometimes referred to in Section VI as the "magnet review committee") will report its decision as to whether or not applications are to be approved to the applying district and the Voluntary Interdistrict Coordinating Council.

3. Applications for 1984-85 magnets may be filed with the committee immediately upon the approval of this agreement by the Court and until December 15, 1983. On or before February 1, 1984, the committee shall render its decision on 1984-85 magnets. Each year thereafter, applications shall be filed with the committee no later than December 15, for programs beginning in the succeeding fall and the committee's decision shall be rendered on or before February 1.

4. There shall be six persons serving on the magnet review committee. Two persons representng the City Board, two persons representing the N.A.A.C.P., the Caldwell Plaintiffs, and the Liddell Plaintiffs, and one person representing the State, shall constitute the review committee. The committee shall choose its chairman annually and shall make such reports to the Voluntary Interdistrict Coordinating Council as may be required.

5. The magnet review committee shall use at least these criteria in judging the applications for new magnets or expansion of existing magnets:

a. The extent to which the magnet will promote the desegregation effort.

b. The educational need of the students and the balance of educational opportunities.

c. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

d. The non-duplicated nature of undersubscribed magnet schools or programs.

e. The cost effectiveness of the programs related to the number of students served.

6. A district may seek approval for a planning grant for the purpose of devising a magnet school or program. The committee, in cooperation with the State Department of Education, has the sole authority to approve such grant and set the amount which shall mean that the district shall not face competition from similar planning or development effort during the period shown on the grant.

D. Evaluation

1. The magnet review committee shall biannually review the quality of magnets and report to the host school and the Voluntary Interdistrict Coordinating Council as to the improvements that are recommended in magnets and/or whether or not a magnet should be terminated. Such reports shall be included with the annually published common orientation booklet.

2. In preparation of the biannual review, the host school shall submit to the magnet review committee information on at least these criteria:

a. The extent to which the magnet has promoted and will promote the desegregation effort.

b. The quality of the magnet as measured by student outcomes.

c. The educational need of the students and the balance of educational opportunities.

d. The extent to which the magnet assists the host school district in meeting its desegregation effort under this plan.

e. The non-duplicated nature of undersubscribed magnet schools or programs.

f. The cost effectiveness of the program related to the number of students served.

E. Planning and Evaluation of Staff

1. The magnet review committee shall be a standing committee of the Voluntary Interdistrict Cordinating Council and shall initially have the assistance of the following staff: one senior educational planner, one senior educational evaluator and no fewer than three support staff.

2. The staff shall report directly to the Executive Director of the Voluntary Interdistrict Coordinating Council and shall function to assist the review committee in its planning and review of applications and its evaluation of magnets. In addition, the staff shall coordinate with the personnel responsible for student assignment.

F. Administration

Each magnet school or program shall be under the control of the host district board of education as to theme, level, continued existence, administration, staffing, and location.

G. Protection of Local Programs

Magnet school themes and curriculum shall not be construed to prevent or inhibit the continuation of, or changes in, programs or curricula in non-magnet schools or programs.

H. Public Information

Magnet list schools shall be publicized annually in a **common** orientation booklet and through city-wide and county-wide visitation and presentations to interested parents and students.

I. Common Application

A common, uniform application form shall be devised by the Recruiting and Counseling Center(s) and distributed as part of the magnet orientation booklet. No one shall be admitted to a magnet school who has not completed this application.

J. Student Eligibility for Magnets

1. All students whose race is in the majority in their assigned school and district, except as provided in paragraph (d) hereof, shall be eligible for acceptance into a magnet school in a district in which their race is in the minority if: (a) their home district signs a statement attesting to no record of recent disruptive behavior; (b) if any identified special needs are diagnosed as no more severe than Phase I; (c) they meet such qualification requirements as may have been approved by the Magnet Review Committee as specifically appropriate to some magnet themes; (d) in addition to the above, (i) white students in the City of St. Louis are eligible to attend City magnets if they are enrolled in a school in which the white enrollment is either 0-10% or over 50% and (ii) black students in majority black districts are eligible to attend magnets hosted in other majority black districts if all host district black students who have applied have been accepted and slots for black students remain in said school.

2. Students residing in the city or county who are enrolled in non-public schools shall be eligible if they meet the above conditions and if space in a magnet remains available after all public school applications have been processed for a given term.

K. Priority of Acceptance

The present enrollment of existing magnets will be given first preference. If in any school year the number of eligible black students applying for magnets hosted by a majority white district exceeds the total number of spaces remaining, the spaces shall be allocated among the majority black districts under the formula set forth in Section II.B.3.

L. Reserved Seats

Up to 30% of the seats in any magnet shall be reserved initially for eligible applicants residing and enrolled in the public schools of the host district. This proportion shall not be deemed a restriction on the host district enrollments and the reserve seats may be allocated to out-of-district applicants if fewer than 30% apply.

M. Continuation of Educational Program

A student who completes one term in a magnet school in good standing within the code of conduct shall be continued in the school until graduation or until parents or guardian applies for transfer whether or not such magnet continues to be a part of this agreement.

N. Assignment and Tenure

1. If a student indicates that he/she wishes to transfer to a magnet school, the student may indicate up to three school choices.

2. Each district shall, by a date specified by the Recruitment and Counseling Center, report to the Recruitment and Counseling Center the target enrollment and available slots by grade level and race for any magnet schools operated by the district.

3. Magnet applicants will be assigned based on processing each student's choices with the slots available in the magnets.

Students who remain unassigned will be placed on the magnet waiting list and processed on a first come first serve basis.

4. Students who are enrolled in magnet schools shall be eligible to apply for a transfer to other magnet schools.

5. Kindergarten pupils in magnet schools will not automatically be promoted to the first grade in that magnet school, except where the magnet program specifically permits.

6. Students who graduate from a magnet school shall be eligible to transfer to a similar magnet school at the next grade level with first priority and without the necessity to reapply.

7. Students who graduate from a magnet school shall be eligible to transfer to any other magnet school at the next grade level with first priority, but must reapply.

8. Students in a magnet school which is divided into several schools or expanded in grade levels shall have first priority to transfer and without the necessity to reapply.

IV. Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision to Improve Instructional Quality in Non-Integrated Schools

Introduction

The parties recognize the importance of the concept of the improvement of the quality of education in schools in the City of St. Louis and their responsibility to submit specific provisions concerning same to the Court. The City Board has developed a program of the kind and scope to satisfy Section III of the Agreement in Principle and it is attached hereto as an Appendix. However, the St. Louis County School districts do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design. The parties agree that the Appendix forms a basis for setting

forth a detailed implementation program to improve the quality of education in the St. Louis Public Schools. More detailed information, including budgetary matters, will be reviewed as the implementation schedule is developed and the hearing on funding provisions is held. A summary of the Appendix follows:

1. **Strengthen the Long-Range Planning Capabilities of the District**

Proactive planning is essential to the future of the St. Louis Public Schools - a school system which is experiencing declining enrollments, declining revenues and aging facilities. The school system operates within the context of a Court ordered intracity desegregation plan and is preparing to participate in a metropolitan-wide voluntary settlement plan which extends the promise of an end to Court supervision within seven years. In this complex array of circumstances, the ability of the school system to provide quality educational experiences for the children and youth of the community rests in large measure on its ability to predict future events and circumstances and to plan accordingly. The planning must be logical, systematic and comprehensive to ensure that scarce human and material resources are targeted effectively and efficiently toward the achievement of the school system's objectives. This will require the development of a strong and dynamic planning component and the service units to support it.

The Long-Range Planning Unit will serve a central management support function and will be structured and equipped to facilitate the design of the future of the school system. The unit will address the need for consistent and focused direction for development and implementation activities within the school system and for the coordination of objectives and activities among support units in schools. It will address the need to organize for the efficient and effective use of human and material resources. The unit will

also fulfill the need to expand and utilize the findings of research and evaluation in developing projects and programs. It will facilitate planning which extends from goal-setting, needs assessment and problem analysis to the formulation of objectives and the design of strategies to achieve them. The unit will facilitate a systematic, logical approach to decision-making which draws heavily upon the analysis of data and information including demographic trends, availability of resources and evaluative feedback.

One of the major tasks of this unit will be the planning necessary to ensure the coordination of objectives and activities related to the implementation of the effective schools concept in all public schools in the City of St. Louis.

2. **Reduction of Pupil-Teacher Ratios, Staff Selection and Performance Assessement**

The pupil to classroom teacher ratios in integrated regular schools and in magnet schools will be lowered over the next five years to 25:1. The pupil-teacher ratio in non-integrated schools will be lowered to 20:1 within the next five years.

The first step in the reduction of pupil-teacher ratios throughout the school system will be taken in 1983-84 when pupil-teacher ratios will be reduced to those in effect in 1981-82. Current pupil-teacher ratios and those proposed for 1983-84 are as follows:

1982-83	**1983-84 (1981-82 Level)**
Kg. - 30:1	Kg. - 25:1
1-3 - 35:1	1-3 - 26:1
4-12 - 35:1	4-12 - 30:1

Absent an allowance for the loss of students who would transfer to County districts, it is estimated that 350 additional teachers would be needed to lower the ratios as planned for 1983-84. The actual number of additional teachers needed should be considerably less than 350; however, that number can only be determined when the number of students who transfer to the County and the number of County students who transfer to the City is known. For example, should 3,000 students transfer to County districts in 1983-84 and 500 County students transfer to the City, the net loss of City students would be 2,500. This would reduce the need for additional staff to change the pupil-teacher ratios to the proposed 1983-84 levels by an estimated 93 teachers.

The reduction of pupil-teacher ratios will require the opening of additional classrooms, at least initially. As the net enrollment declines through the transfer of students to and from the County, the need for additional classrooms and additional teachers should decrease.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

Pupil-teacher ratios in pre-schools would be 15:1 per session for both teachers and aides.

The reduction of class size will facilitate more efficient classroom management and provide for greater time on learning tasks which is essential to the mastery of cognitive skills.

Staff Selection

Staff selection criteria and procedures will be reviewed and strengthened to ensure high standards for the selection of new staff. The criteria will, among other things, relate directly the requirements of the effective schools model, the strong emphasis on teaching basic skills and high expectation for students and staff.

Performance Evaluation

The instruments and processes for the assessment of staff performance will be evaluated and revised where necessary to assure high performance standards.

3. **Effective Schools Model**

An effective schools model which has been adopted in urban areas across the country and piloted in certain St. Louis Public Schools will be adopted as the major emphasis for all St. Louis Public Schools.

This generally accepted model identifies five characteristics of effective schools and delineates steps to take to ensure that these characteristics prevail.

(1) **Strong administrative leadership** is ensured through a self-assessment process, through appropriate inservice training and through continuous assessment of the impact leadership has on the total operation of the school.

(2) **High teacher expectations** is a two pronged thrust. Teachers must have high expectations for their own performance which flows from strong, effective administrative leadership. Of equal importance is the belief that teachers must have high expectations for students they teach. Inservice orientation for teachers will be designed to

promote techniques for helping students acquire high self-expectations. Team planning, guided by inservice consultants, should provide methods which promote the positive attitudes which lead to the acquisition of basic skills.

(3) **Positive school climate,** the third characteristic of effective schools, flows from the first characteristics. Schools having strong administrative leadership, teachers with high expectations for themselves and students, and staffs that plan cooperatively have the basic elements for a positive school climate. This characteristic is specifically treated in inservice training sessions for staff and parents are also involved at this step.

(4) **Emphasis on basic skills,** another of the characteristics of effective schools undergirds the interrelates with each of the other characteristics. All constituents - administrators, teachers, students and parents - are made aware that basic skills acquisition is a number one priority. The scope and sequence of skills adopted by the system guide each individual school as staffs work to ensure that students in their school will attain those skills which are required system-wide. Strengths and weaknesses in basic skill areas are assessed so that appropriate emphasis will be given to attaining skills where there are deficits and that skills that are acquired are maintained.

(5) **Ongoing student assessment** is also characteristic of effective schools and is carefully planned and implemented. This characteristic is ensured through participation in the system-wide testing

program, of course. But of equal importance are mastery tests prepared by teachers or such tests as are integral components of curriculum materials and those assessment tools accompanying the Competency Based Education materials in use system-wide.

The implementation of the Effective Schools Model requires sufficient, well trained staff working together to provide the best possible education for future productive citizens. As the characteristics of effective schools infuse the total school system, the major goals of the system will inevitably be met.

4. **Provisions for a Full Complement of Staff**

As previously stated, the implementation of an effective schools model requires that sufficient staff be available to schools implementing that model. The St. Louis Public School System was required because of serious financial deficits to reduce staff. This section speaks to restoring staff and ensuring that a full complement of staff is available. A previous section has addressed lowering pupil teacher ratios and providing sufficient regular classroom teachers who are carefully selected and assessed in an ongoing effort to assure effective schools.

It is a fact acceppted by educators, parents, students and community that whereas the development of the cognitive basic skills is the top priority of school systems, there are additional facets of education requiring the attention of public school staffs.

Accordingly, the restoration of such specialized staff as art, music and physical education teachers will fill the void which currently exists in the provision of quality educational experience in these areas. Students will have the opportunity to develop related skills as fully as possible.

Likewise, extra-curricular programs such as intramural sports and interscholastic athletics are important in the broad context of providing worthwhile life-long interests and skills for students. To fulfill this obligation of effective education, coaching positions at the secondary level will be reinstated.

Student entering the formalized structure of first grade with prerequisite skills will profit from the emphasis on basis skills in all effective school settings. Therefore, sufficient staff to provide all day kindergarten programs for all students entering the St. Louis Public Schools will be provided.

Acknowledging that there are children with handicapping conditions and further acknowledging that these children are worthy human beings deserving of the best educational services, consideration is given to providing sufficient staff to meet the educational needs of these children. Whether handicapping conditions are orthopedic, sensory, emotional or intellectual, they must be effectively addressed. Staff will be available in the public school system to address these needs to the extent required.

Support staff required for meeting basic needs of students will be reinstated as needs indicate. In this category are school nurses, social workers, psychologists and psychological examiners.

Implementing an effective schools model necessitates such ancillary staff.

Additionally, support staff at a central level required to ensure long-range planning efforts, curriculum development, staff development and evaluation and assessment of staff and students will be hired and reinstated as required.

All considerations related to raising staff to full complement will strengthen the concentrated efforts to achieve the

goal of improving the quality of education throughout the school system.

5. **Curriculum Development**

A five-year plan has been developed for the revision of curriculum. Curriculum development will be interdisciplinary in approach and will be supportive of the effective schools concept. Efforts will address the refinement of scope and sequence charts for the basic skills, the need for the frequent assessment of student progress and the means for conducting such assessments.

Curricula will also be developed for the Early Infant/Parent Centers and Pre-School Centers which will be established to serve families throughout the City. These centers will provide programs which are designed to ensure that children will be prepared to benefit fully from their educational experiences in the formal kindergarten through grade twelve program.

Measures to improve the quality of education must include efforts to ensure the access of students to adequate learning resources and a rich variety of learning experiences. The City Board proposes to improve and expand its library and other media resources and services and to conduct programs which provide access to the rich educational experiences available through cultural and other community instituations. Programs to promote computer literacy will be provided as will expanded programs in career education and cooperative education.

6. **Staff Development Division**

Strong support for curriculum development and implementation will be found in the establishment of a Staff Development Division. The major goal of the Division will be to provide effective schools orientation, prepare staff for local school assessment relative to the characteristics of

effective schools and prepare staff for planning local school strategies for the attainment of those characteristics for each school. Curriculum development and revision, the lowering of pupil-teacher ratios, the rehiring of staff, the hiring of new staff and staff exchanges, will result in significant alteractions to the environment of the classroom teacher and the building adminstrator and will require educators at all levels to utilize new information and/or techniques in the performance of day-to-day activities.

The Staff Development Division would have the following goals:

a. To assist in the implementation of the effective schools program in all schools within the system by providing individual school staffs with the necessary training they need to put the program into effect. By working closely with the building staff, Staff Development will ensure strong support for the effective schools program.

b. To train staff in newly developed or revised curriculum.

c. To address the specific staff training needs in non-integrated schools.

d. To address human relations needs specifically as part of the new educational environment.

e. To address any other aspects of the new educational environment in schools.

All of these goals would be pursued through the provision of inservice sessions for large groups, single school or department inservice sessions, and in individualized follow-up sessions for teachers, administrators or other staff.

7. **Facilities**

The St. Louis Board of Education has a responsibility to efficiently operate, maintain and improve, where necessary, in excess of 9 million square feet of aged building facilities on over 135 separate sites, housing integrated, non-integrated and magnet schools.

The general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age. This situation can better be understood by examination of some very basic data and information as follows.

Age Distribution
of Basic Operating Facilities of the St. Louis Public Schools

Period of Basic Construction	Age Range	Approx. Building Area	Approx. % of Total
Prior to the turn of the century	83 to 112 yrs. old (17 bldgs.) 7 non-integrated 5 integrated 3 magnet 2 alternative	845,000	9%
Between1900-1908	75 to 83 yrs. old (22 bldgs.) 8 non-integrated 10 integrated 4 school support facility	1,434,000	15%

Between 1908-1918	65 to 75 yrs. old (20 bldgs.) 8 non-integrated 6 integrated 6 magnet	1,646,000	19%
Between 1918-1933	50 to 65 yrs. old (31 bldgs.) 11 non-integrated 8 integrated 8 magnet 2 alternative 2 school support facility	2,516,000	26%
Between 1933-1948	35 to 50 yrs. old (13 bldgs.) 5 non-integrated 3 integrated 2 magnet 3 school support facility	681,000	6%
Between 1948-1967	16 to 35 yrs. old (39 bldgs.) 28 non-integrated 2 integrated 4 magnet 4 school support facility 1 alternative	2,238,000	24%

Most notably, the data show that:

Nearly one fourth of the building area of the St. Louis Board of Education is over 75 years old. This building area

alone compares to the total district building area of some of the largest and newest metropolitan area county districts.

Nearly one half of the building area of the St. Louis Board of Education is over 65 years old.

More than two thirds of the building area of the St. Louis Board of Education is over 50 years old.

Moreover, nearly one tenth of the building area of the St. Loius Board of Education was built before the turn of the century with four basic facilities over 100 years old.

The aged facilities of the St. Louis Board of Education are currently in a severely deteriorated and sometimes dilapidated physical condition and are in immediate need of not only a major deferred maintenance program, but also a general improvement, renovation and modernization program.

The Relationship of Efforts to Improve Educational Quality to the Upgrading of Facilities

Every effort should be made to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process. This is accomplished through providing buildings and grounds which are safe, clean, attractive, clement, healthful, efficient, and functional in terms of the current technology and teaching program laboratories.

School facilities which are not safe, clean, attractive, clement, healthful, efficient, and functional, create distractions which inhibit the learning process from a variety of perspectives. Consequently, steps need to be taken to remove such inhibitors in order to provide a milieu in which the student is free to concentrate on learning and developmental tasks and the teacher has at hand an appropriately

designed and furnished space and the needed resources which will contribute most effectively to the learning process.

It is firmly believed that the above relationship is valid. Therefore, it becomes imperative that the Board obtain sufficient facilities funds to not only provide for deferred maintenance but also to initiate a comprehensive program for general renovations, associated program improvements, and modernization of its facilities.

In addition, staff reductions have impacted the Groundskeeping Division and the Building Maintenance and Repairs Division. Staff must be restored to ensure the consistent, continuous services required to maintain upgraded facilities and grounds.

8. **Evaluation and Assessment**

Key to the improvement of the quality of education is the effective use of the products of evaluation and research. The City Board's Division of Evaluation will play a greater support role in this effort. The products of this unit will provide guidance for the long-range planning efforts of the district, the management of curriculum and instruction, the planning and provision of appropriate staff development opportunities for all staff and the continued targeting of the school district's efforts on the achievement of its educational objectives.

The implementation of the effective schools model carries with it many new assessment requirements. School staffs must assess their individual schools relative to the characteristics of effective schools. Instruments will be needed for teachers, administrators, parents and students to assess school climate. Effective schools monitor student progress frequently so that staff can be constantly aware of learning progress in relation to instructional goals and can adjust

teaching efforts efficiently. All of these requirements indicate a greater reliance on the expanded use of the products of evaluation and research.

This is not to say that evaluation would concern itself simply with outcomes. Process evaluation is essential to any form of continuous corrective feedback. Working hand-in-hand with all components of the Plan, especially with Long-Range Planning, evaluation would assess such matters as the effectiveness of the management and logistics of the Plan and whether services have been reasonably planned and delivered. Only then can the human and material resoures of the school district be targeted consistently upon the provision of quality educational experience for the children and youth of the community.

Special Provisions for Non-Integrated Schools

In addition to the measures for the improvement of instruction throughout the school system from which the quality of education in integrated, non-integrated and magnet schools will be greatly enhanced, additionall [sic] provisions will be made to upgrade the quality of education in non-integrated schools. Such provisions range from the establishment of pupil-teacher ratios which are lower than the reduced pupil-teacher ratios for other schools to the establishment of non-integrated schools of special emphasis. These provisions may be categorized as instructional or motivational in nature and are described briefly as follows:

1. **Instructional Programs**

   a. **Lower Pupil to Classroom Teacher Ratios**

      Subsequent to 1983-84, the City Board proposes to reduce pupil-teacher ratios in non-integrated schools to an interim goal of five students below the proposed system-wide ratios for 1983-84 and to a ratio of 20:1

within five yars. [sic] This ratio is estimated to be five students below the average for county districts and the proposed ratio for regular integrated schools and magnet schools.

Should enrollments in non-integrated schools remain the same as projected for 1983-84, some 265 additional teachers would be needed to reach an interim goal of ratios of 20:1 in kindergarten, 21:1 in grades 1-3 and 25:1 in grades 4-12. However, a reduction in enrollment through the transfer of students to County districts could reduce the need for additional staff substantially.

b. **After-School, Saturday and Summer School Experiences**

Remedial instruction and appropriate learning enrichment opportunities will be provided. Such remedial programs will provide more "time on task" in the development of cognitive skills. Enrichment experiences will be linked to courses of study and will promote the full understanding of subject matter and its various applications in the broader community which cannot be acquired in a classroom setting alone. These experiences will be designed as extensions of classroom activities rather than replications of them.

c. **Parental Involvement**

Parent and staff seminars will be instituted to promote a mutual understanding of the school's mission and parental expectations of the school. Additionally, opportunities will be provided for parents to become tutors of their kindergarten and primary grade children. The involvement of parents as partners in support of learning is an important characteristic of

effective schools. Such involvement is incorporated into the effective schools model.

d. **Schools of Special Emphasis**

Resources will be provided for non-integrated schools to develop programs of special academic emphasis for individual schools. Many black students, for one reason or another, will not be able to enroll in a magnet school or transfer to the County but still wish to receive alternative educational programs. Schools of special emphasis would be designed to meet those needs and interests.

2. **Motivational Programs**

a. **Motivational Recognition Experiences**

The motivational recognition experiences programs will provide a number of activities which will make available to pupils opportunities for success and recognition. Such activities as writing contests, debates, math competitions, science expositions and others will have motivational effects on students as well as provide numerous oportunities for them to receive recognition for both participation and achievement. These activities would be scheduled throughout the year, and would be coordinated with the curriculum in order to ensure that pupils recieve maximum benefits from participation. Activities would be scheduled for pupils in grades kindergarten through grade 12.

b. **Role Model Experiences**

Students in non-integrated schools will be provided with successful role models to encourage them to continue in their academic careers. Assembly programs and other large group activities, and classroom ex-

periences with local, state and national figures will be arranged. These experiences will be coordinated with curricular materials in such a manner as to support the regular instructional program. Actual contacts with successful role models will encourage academic achievement, particularly in social studies and other areas which address current events.

c. **Shared Experiences Program**

Provisions will be made for the establishment of student concerns committees in each elementary and middle school. The committees of student representatives will meet regularly with the principal and will address such issues as student morale, attendance and behavior. Members will participate with staff in efforts to create a school climate which is conducive to the maintenance of an effective learning program.

V Part-Time Educational Programs

A. **Part-Time Ancillary Programs.** Many of the part-time ancillary programs are presently in operation in the St. Louis public schools and may be expanded to include participating districts.

Among those programs presently in operation which may be expanded are the following:

Pairing and Sharing
The Law and Education Project
Springboard to Learning
Career Education
The School Partnership Program
Ethnic Heritage
Radio Station KSLH

Another program which may be expanded for the benefit of both city and county students is the English as a Second Language (ESL) program. This program is presently opera-

tional in three schools that have been designated as ESL Centers. Students must be enrolled in the school and show need of ESL services before they can participate.

Additionally, cultural/educational institutions with long-standing and enviable records for their educational programs for school children as well as the adult community have made commitments to participate cooperatively in programs specifically designed to bring together students from city and county schools. They have well-trained staffs and well-equipped facilities for extending learning experiences beyond conventional classrooms to the broader environment of the community and the world at large, some of the institutions involved are:

KETC-TV
McDonnell Planetarium
Missouri Botanical Garden
Missouri Historical Society
Museum of Science and Natural History
Saint Louis Art Museum
Saint Louis Symphony
Saint Louis Zoo
United Nations Association
Urban League Library

The voluntary integration programs to be offered by these institutions will be a cooperative effort between each institution and the participating schools. As a first step, the institutions will establish certain general guidelines for their respective programs and extend the opportunity for participation to schools in the city and county. Faculty members and administrators will recommend students for participation in the programs.

While the format and scope of the programs will vary from institution to institution, each will have a common denominator: To bring together racially mixed groups of students from the metropolitan area districts periodically for programs of unique educational value.

Additionally, it is envisioned that cable television could become an integral part of the metropolitan voluntary plan.

B. **Part-Time Specialty Programs.** Students enrolled in part-time specialty programs shall attend classes a half-day for a complete semester or a full year. These programs include, but are not limited to:

Honors Art
Honors Music
Transportation
Mass Media

A student may participate by enrolling in that high school or by spending one-half day in his/her home school and the other half in the high school of the speciality. Honors Art and Honors Music shall be in a school setting which houses only these programs. For these last two programs, students must spend one-half day in their home school and the other half day in Honors Art or Honors Music Programs. All specialty programs are at the secondary level.

C. **Policies and Procedures**

1. Pupils must apply for admission into part-time specialty programs and will be admitted on a first-come, first-served basis with consideration being given to racial balance.

2. Part-time ancillary program experiences will be cooperatively planned and implemented by staff at the participating schools and institutional staff where appropriate with due consideration being given to racial balance.

VI. Faculty

A. **Definition of Teacher and Administrator**

1. As used herein, the term "school district" shall apply to each and every school district which is a signatory to this agreement.

2. As used herein, the term "teacher" shall include all certificated staff except certificated adminstrators. The term "administrator" as used herein, shall include all administrators, whether certificated or not.

B. **Purposes**

1. Recruitment and selection of newly hired employees and the terms and conditions of employment shall be maintained and conducted in a manner which does not discriminate against black people because of their race.

2. To increase the number of black applicants who satisfy the school district's standards for employment.

3. To implement a system for monitoring and recording school district efforts to secure black applicants for teachers and administrators.

4. To seek to achieve a goal in its staff of teachers a work force of at least 15.8% black.

5. To seek to achieve a goal in its staff of administrators a work force of at least 13.4% black.

C. **Recruitment of Teachers and Administrators**

The school district shall be responsible for recruiting black applicants for employment as teachers and administrators using any reasonable means available to it. The school district shall keep records to show how this section has been implemented and to report in the annual report specified herein in Section F herein the steps taken pursuant to this section.

D. **Application and Selection Procedures**

1. The school district shall initiate and maintain a record system sufficient to identify for each applicant, his or her identity, race, position(s) applied for, position(s) considered for, disposition, the source of the applicant's knowledge of the job

opening, the date the application was received and any other information required to satisfy the provisions of Section F hereof.

2. The school district will retain an affirmative action file of all black applicants.

3. Whenever the school district has a vacancy, the Affirmative Action file shall be reviewed to identify qualified black candidates for consideration for such vacancy.

E. **Annual Hiring Goals**

Subject to the provisions of paragraphs 1 and 2 hereof, the following hiring goals for the employment of new teachers and administrators, to be judged on an annual basis, shall be applied:

Number of New Hires	**Ratio - New Hires**
1 through 9	1 black: 2 white (33 1/3%)
10 through 20	1 black: 3 white (25%)
21 through 50	1 black: 4 white (20%)
51 or more	1 black: 5 white (16.6%)

For example, if in any year a district hired 17 teachers and/or administrators, the first 9 hires would be 3 black and 6 white and the next 8 hires would be 2 black and 6 white.

Each school district shall report to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel the number and percentage of teachers and administrators broken down by both black and white teachers and administrators as of the effective date of this agreement, such report to be filed thirty days after such date.

1. Nothing contained in this agreement shall be construed to require the employment of unqualifed [sic] teachers or the discharge or replacement of any teachers employed by a school district.

2. School districts shall be obliged to use their best effort to attain the goal and above stated annual hiring goals. Failure to

attain the goal or annual hiring goal may be justified, among other reasons, if a district demonstrates that such failure was because it hired the best qualified candidate for each position.

F. **Reporting and Enforcement**

Commencing October 1, 1983 and annually thereafter, each school district shall file a report covering teachers and administrators with the Voluntary Interdistrict Coordinating Council and each of the plaintiffs' counsel herein, containing total number of new hires, total white new hires, total black new hires, positions filled with new hires, rate of pay and total applications received in that year broken down between white and black applicants. The first such report shall contain such information for the period from the date of this agreement to September 15, 1983 and each subsequent annual report shall cover the period from September 16, to the following September 15.

If a district's annual hiring goal is not met and upon request of plaintiffs or their counsel each school district upon receiving such request shall provide within a reasonable time the following additional information, which shall not include the name of any person hired or of any applicant for employment:

1. Positions filled during the reporting period showing race, date of hire, position hired into, rate of pay, and reason for selection;

2. All applicants for positions filled during the reporting period showing race, date of application, position applied for and position considered for, reason for the rejection of other applicants for the position filled and date decision was made. If a district's annual hiring goal is not met and if plaintiff's counsel desires additional information to that previously provided pursuant to the terms hereof, plaintiff's counsel shall have reasonable access to these documents upon request to the school district's counsel and upon mutually agreeable terms.

The school district shall retain all applications, correspondence, applicant logs, interview sheets and all other documents relating to any application for employment and the basis for selection or rejection of any applicant, including the name and address of each individual applicant and/or person employed.

The provisions of this settlement agreement relating to the recruitment and employment of black teachers and adminstrators are subject to judicial enforcement; provided, however, except for good cause asserted, counsel for the movant, prior to seeking judicial enforcement, shall first confer with the school district's counsel or make reasonable efforts to do so, in an attempt to resolve any differences.

Nothing contained herein shall preclude any individual who believes he/she has been discriminated against because of race from asserting such claim in an appropriate forum whether or not this agreement's hiring or pupil goal has been met.

G. [sic]

All obligations pursuant to this agreement relating to hiring of black teachers and administrators, including the reporting requirements in Section F hereof, shall terminate at the time the hiring goals of 15.8% black teachers and 13.4% black administrators is reached, or the pupil goal of 25% black students is reached, whichever occurs earlier. The meeting of such goal or goals shall be documented by data reported to the Voluntary Interdistrict Coordinating Council and plaintiffs' counsel.

H. **Duty to Follow State Law**

Nothing herein shall require a district to violate any provisions of Missouri law and, in particular, the Missouri Teacher Tenure Act, as amended, applicable to both six director and Metropolitan school districts; provided however, in filling vacant teacher positions, districts shall use to the extent required and at their request, desegregation funds as may be ordered by

the Court and received by the districts because of their participation in this settlement agreement to fill such vacant positions through new hires of blacks to meet the annual goal set forth in Paragraph E.

4. I. **Teacher Transfers and Exchanges**

Voluntary interdistrict transfers of teachers will also be used to attain affirmative action goals when such transfer results in movement toward a district's annual affirmative action goal.

Voluntary teacher exchanges will be encouraged to enhance desegregation efforts.

a. Purpose

The purpose of the teacher transfer and exchange program among metropolitan and county school districts is to enhance racial teacher balance and teacher integration experiences in the districts. Another purpose of this program is to foster attitudes of responsiveness, cooperation, and innovation in meeting educational challenges.

b. Conditions

i. The exchange teacher shall remain an employee of the home district and will receive from the home district the scheduled salary and fringe benefits to which he/she is entitled as an employee of that district. Existing liability insurance agreements of districts shall be appropriately amended prior to any exchange or transfer to provide continued coverage for the exchange or transfer teacher.

ii. Any teacher who volunteers has the right to maintain affiliation with professional associations of his/her choice.

iii. Teacher tenure status shall not be affected by the special assignment to another school district.

iv. Personnel policies normally provided to teachers in the receiving district shall be given to exchange or transfer teachers.

v. The teacher shall receive from the host district mileage reimbursement for job related functions that others in similar positions receive. No mileage reimbursement shall be provided for travel to and from the worksite and the teacher's home.

vi. The school calendar of the host district shall be totally followed by the exchange or transfer teacher. The effective date of assignemnts beginning in the fall shall be determined by each district's calendar. When the beginning dates of the districts' second semesters do not coincide, the effective date of the exchange shall be the latter of the two for both exchange teachers. The effective date of administrative changes shall be agreed upon by the participating districts.

vii. Selection procedures may provide for visitations and interviews prior to acceptance by any of the parties involved.

viii. The exchange or transfer teacher's period of assignment shall be mutually agreed upon by the home and host districts. The exchange teacher is expected to serve full term of the exchange or transfer agreement. Should a request for transfer be submitted by the exchange or transfer teacher before the end of the agreed-upon term, the request shall be reviewed and action agreed upon by the home and host districts prior to any final determination.

ix. In the event of an exchange teacher's absence, the host district shall provide the substitute teacher, and

the home district shall pay the costs of a substitute teacher as billed at the scheduled rate of the host district for the balance of the period of the exchange.

x. Supplemental assignments of exchange teachers are permissible and may be made by either district during the exchange period. Extra-duty pay for all services performed in the host district shall be forwarded to the home district for deposit. The home district shall assume responsibility for making necessary employee deductions before issuing a check for the extra-duty assignment.

xi. The teacher exchanges and transfers shall be limited to full-time, tenured staff, except by mutual agreement of the individual districts involved.

xii. The evaluation of exchange and transfer teachers shall be as mutually agreed to by the home and host school districts.

xiii. The exchange or transfer teacher shall be expected to return to the home district at the end of the exchange or transfer assignment period.

xiv. When the exchange or transfer teacher returns to the home district, assignments will be based upon the home district's policies and procedures.

xv. An exchange or transfer teacher shall receive on a one time basis only a monetary bonus for the completion of one full school year of service under this section, such sum as may be agreed upon by the host and home districts.

xvi. The host district shall pay the transfer teacher's remuneration, including the cost of a substitute teacher's salary.

xvii. All transfers and exchanges shall be subject to the approval of both the home and host districts.

VII Parent Involvement

A. Each participating district shall encourage the parents or guardians of students transferring into or out of their district to participate in the educational process and shall not be restricted from or denied access to activities and processes provided to resident parents. In this regard, additional steps may be initiated by the district to foster this positive relationship. Among the areas which may require special attention by the districts are the following:

1. Parents may need an opportunity before the student transfers to visit the host school and meet the staff, particularly the student's teacher(s), in a supportive milieu that encourages further interest and participation.

2. Parents should be encouraged to participate actively in the parent organizations of the host school and district.

3. If transportation presents a problem for the parent, assistance might be arranged through carpools or other means as the district may decide.

4. Opportunities for evening conferences between teachers and parents could be provided.

5. Parents need to be informed about academic policies and discipline code procedures before the student completes the transfer process.

B. A parent advisory council under VICC with representation from all participating districts, which includes

parents of resident and transfer students, may be constituted on an annual basis. This council shall provide assistance to the Voluntary Interdistrict Coordinating Council in addressing parent and student concerns about the interdistrict voluntary plan.

VIII. Transportation

1. The Missouri State Department of Elementary and Secondary Education shall:

a. Provide transportation for interdistrict transfer students enrolled and participating in regular or magnet programs who reside more than one mile from the school site;

b. Provide transportation for students enrolled and participating in part-time ancillary programs and half-time speciality programs.

2. Any district may request to manage the transportation of their voluntary transfer students or voluntary transfer students attending other districts; and if such a request is made, the State shall approve same if it is cost effective and can be assimilated into the state operated transportation program.

IX. Administration

A. Establishment and Purpose of Voluntary Interdistrict Coordinating Council.

1. A Voluntary Interdistrict Coordinating Council ("VICC") shall be established as provided herein.

2. The purpose of the VICC is to coordinate and administer the student transfer and voluntary teacher exchange provisions of the settlement agreement. The VICC shall have no authority or responsibility for the operation of the school districts which are parties to

this agreement, and it is hereby expressly understood and agreed that all such authority and responsibility remains with the duly elected board of education for each school district, as provided by law. The VICC shall have no power to alter or amend the terms and provisions of the settlement agreement. The VICC shall have no powers beyond those expressly granted to it herein, or as may be granted to it by any amendment to the settlement agreement duly authorized by the unanimous consent of the parties and with approval of the Court.

B. **Membership**

1. The VICC shall have the following voting members:

   a. One person selected by each school district which is a party to this agreement;

   b. One person each selected by the National Association for the Advancement of Colored People ("NAACP") and by the Liddell plaintiff group as parties to this agreement; and

   c. One person employed by the State Department of Elementary and Secondary Education, or its successor, selected by the Commissioner of Education, or his successor.

2. The VICC may, in its discretion, invite teacher, parent and other interested organizations to select representatives to participate in the activities of the VICC as non-voting members.

3. Each appointing authority shall also select an alternate representative to the VICC. The alternate shall have the same power and authority as regular members in the absence of the regular member.

4. Each regular and alternate member shall serve for a term of one year. Each appointing authority shall name its initial representatives to the VICC within ten days after approval of this agreement by the Court.

C. **Voting**

Each person appointed pursuant to paragraph IX.B.1. shall be entitled to one vote on each matter submitted to a vote of the VICC. On all questions a majority of the VICC voting shall decide the issue. Alternate members shall have the right to vote in the absence of the regular member.

D. **Quorum**

A quorum shall consist of a majority of the voting members. Official business of the VICC shall be conducted in the presence of a quorum and not otherwise.

E. **Meetings**

1. The VICC shall determine the time, place and date of its meetings, and members are to be considered informed thereof by the action taken by it in making such determinations. Notice of meetings may be confirmed by the Executive Director. In addition, the Chairman, the Vice-Chairman in the Chairman's absence or a majority of the voting members may call special meetings upon appropriate notice to members of the time, place and purpose of the special meeting. The special meetings shall be limited to the purpose stated in the notice unless otherwise agreed by the members.

2. The VICC shall follow and be governed by the provisions of Chapter 610 RSMo. 1982 Supp, as it may be amended or revised from time to time, with respect to its meetings, votes and records.

F. **Officers**

1. The VICC shall elect a Chairman, Vice-Chairman and Secretary from its voting members to serve for a period of one year. No person shall be precluded from holding office because he previously held such office. These positions should rotate among the voting members and parties to this agreement. The position of Chairman shall be held by the City Board representative at least once during the first five years.

2. The Chairman shall have general supervision of the proceedings of the VICC. The Chairman, or in his/her absence, the Vice-Chairman, shall preside at all meetings of the VICC. The Chairman and Vice-Chairman may perform other duties as may be prescribed by the VICC.

3. The Secretary shall keep, or supervise the keeping of, the minutes of the VICC meetings; be responsible for the giving of all appropriate notices; and act as the official custodian of the records of the VICC.

G. **Staff**

1. a. The VICC shall select an Executive Director who shall report directly to the VICC.

   b. The Executive Director shall be responsible for the daily supervision and operation of the overall administrative duties of the VICC.

   c. The Executive Director shall, with the approval of the VICC, employ such full-time and part-time staff as may be necessary to carry out the duties of the VICC.

   d. The Executive Director shall appoint, with the consent of the VICC, a Recording Secretary to take and transcribe the minutes of VICC

meetings. The Recording Secretary shall serve upon terms to be determined by the VICC.

e. The Executive Director shall be an *ex officio* member of the VICC without vote.

2. The VICC shall select a Director of Student Recruitment and Counseling. The Director of Student Recruitment and Counseling shall have primary responsibility for the daily supervision and operation of the Student Recruitment and Counseling Center established herein and shall report to the VICC through the Executive Director.

H. **Fiscal Authority**

1. The VICC may authorize the Chairman, Vice-Chairman or Executive Director to enter into any contract or execute any instrument in the name of the VICC. Such authority may be general or confined to specific documents. All contracts, instruments, or other obligations shall be in writing, and shall be presented to the VICC for approval before being executed. Nothing herein shall be construed so as to impose any personal liability upon the members of the VICC for any such contracts, instruments or obligations.

2. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the VICC shall be signed by the Executive Director and countersigned by the Chairman. In the absence of the Chairman, either the Vice-Chairman or the Secretary may countersign such instruments. At least once each month, the Executive Director shall present to the VICC the vouchers payable for its review and approval. The Executive Director may establish a petty cash fund from which

disbursements may be made by the Executive Director pursuant to guidelines approved by the VICC. The Executive Director's authority is limited to budgeted amounts for expenditures as approved by the VICC.

3. All funds of the VICC shall be deposited to its credit in such banks, trust companies or other depositories as the VICC may select.

4. The VICC may, in its discretion, contract with any school district which is a party to this agreement to act as the VICC fiscal agent, or to provide other fiscal services as may be approved by the VICC.

5. The VICC fiscal year shall be from July 1 to June 30 annually.

I. **Rules, Operating Procedures and Forms**

The VICC shall adopt such reasonable rules, operating procedures and forms as it may deem necessary or appropriate to fulfill its functions under the settlement agreement, and as may be consistent with the terms of the settlement agreement. All such rules, operating procedures and forms may be modified, from time to time, consistent with the settlement agreement.

J. **Powers**

1. The VICC and its staff, in cooperation with the parties to this agreement, shall develop procedures to implement the student transfer and teacher exchange provisions of this agreement. The procedures shall be developed in a manner consistent with the principles as set forth in this agreement. The procedures shall be adopted by VICC as soon as practicable, but in no event later than forty-five days after approval of this agreement by the Court.

2. The VICC shall have the following responsibilities:

   a. To develop procedures for implementation of the student transfer and teacher exchange provisions of the settlement agreement;

   b. To supervise recruitment, counseling and placement of student transfer and teacher exchanges;

   c. To coordinate dissemination of information on available programs to the community;

   d. To assist in developing and implementing an effective and safe transportation system for student transfers, including assistance in setting standards for such implementation;

   e. To coordinate interdistrict safety and security services where necessary;

   f. To prepare an annual budget for its operations for approval by the parties and the Court;

   g. To assist in planning and implementing new magnet schools and magnet programs; and

   h. To report at least annually to the parties and the Court the steps taken to implement the settlement agreement. This report shall include information including but not limited to: student transfers; teacher exchanges; recruitment counseling and initial placement efforts; student placement and modifications and suspension and expulsion relating to transfer students. The Committee shall provide for:

      1. the collection of data providing evidence of compliance and assurance of non-discriminatory treatment, which may include such areas as promotion/retention, extracurricular activities, evaluation and placement.

2. evaluation of implementation process and identification of problem areas to be targeted for special intervention or additional resources. This may include school level data on requests for special education evaluations, disciplinary actions, rates of absence, withdrawal or drop-out.

i. To coordinate the development and dissemination of information about the schools and programs available in each of the school districts which are parties to this settlement agreement;

j. To keep accurate records of all teacher exchanges and status of such exchanges;

k. To receive and address concerns of voluntary exchange teachers relating to their participation in desegregation activities;

l. To assist in staff development and in-service training activities in order to prepare staff to function in integrated settings;

m. To perform such other activities as are necessary and consistent with this agreement.

K. **Student Recruitment and Counseling Center**

1. There shall be established a Student Recruitment and Counseling Center to have responsibility for all recruitment and counseling activities with respect to the student transfers under this settlement agreement. With the approval of the Court, the Student Recruitment and Counseling Center established herein shall include the existing office of the Recruitment and Counseling Center in the City of St. Louis established pursuant to the terms of the St. Louis Public Schools Intradistrict Desegregation Plan. Nothing herein shall

affect the operation of the existing Recruitment and Counseling Center in the City of St. Louis with respect to the Intradistrict Desegregation Plan, and all duties and responsibilities imposed herein shall be deemed additional to those presently performed by that Center. A parallel office of the Student Recruitment and Counseling Center shall be established in St. Louis County by the VICC.

2. The VICC may establish additional and/or satellite offices in the City of St. Louis and St. Louis County as may be necessary and appropriate. All existing satellite offices in the City of St. Louis will continue to operate according to the terms of the Intradistrict Desegregation Plan.

3. The Recruitment and Counseling Center shall with the approval of the VICC hire an adequate staff to perform its duties and responsibilities herein.

4. The Student Recruitment and Counseling Center shall have the following responsibilities:

   a. To process all applications for student transfers in accordance with the principles established by this settlement agreement;

   b. To conduct and coordinate recruitment drives with the school districts which are parties to this settlement agreement;

   c. To conduct and coordinate advertising campaigns relating to the student transfer provisions of this settlement agreement;

   d. To coordinate the development and dissemination of information about the schools and programs available in each of school districts which are parties to this settlement agreement;

e. To keep accurate records of all student transfers and the status of such transfers;

f. To collect and analyze student data for the VICC annual reports to the parties and the Court required by Section IX.J.2.h.; and

g. To perform such other activities as the VICC may deem appropriate and consistent with the terms of this settlement agreement.

5. The Student Recruitment and Counseling Center shall process all student transfers to part-time specialty programs or full-time programs. It shall not process students participating in part-time educational programs.

L. **Part-Time Educational Programs**

The VICC will coordinate the modification, addition or deletion of any such programs in the future.

M. **Transition**

1. With approval of the Court, the Coordinating Committee established pursuant to Order H(226)81, dated July 2, 1981, shall cease to exist upon the effective date of this settlement agreement.

2. Subject to approval by the VICC, all records, funds, property and personnel of the Coordinating Committee shall be transferred to the VICC on the effective date of this settlement agreement.

3. The VICC and the Coordinating Committee shall cooperate to effect an orderly transition.

4. The effective date of this settlement agreement shall be ten (10) days after the approval of this agreement by the United States District Court for the Eastern District of Missouri.

N. **Resolution of Procedural Disputes in the Administration of the Settlement Agreement**

1. It is expected that most issues which are the responsiblity of the VICC will be resolved by a majority vote of a quorum of the VICC.

2. If an issue cannot be resolved by the VICC or a member disagrees with a decision of the VICC, the following steps will apply:

   a. The Chairman will appoint a sub-committee of the VICC to study the issue and report back to the VICC with appropriate recommendations. This sub-committee should consist of three to seven members who represent a fair sample of persons who have a special interest in the issue.

   b. The VICC will then reconsider the issue and vote upon it.

   c. Should this review process not satisfy the parties involved, the issue will then be referred to a mediating panel of three persons. Each party to the dispute will select a member-at-large, and the third member shall be selected by the first two. The decision of this panel will settle the issue on the VICC level.

   d. Direct appeal to the Court will be the final procedure in such matters for all parties.

3. This Section is limited to procedural disputes which may arise in the administration of this settlement agreement. Nothing contained herein shall limit the parties from its rights under Section XII.

O. **Resolution of Individual Disputes and Grievances of Transfer Students**

The Recruitment and Counseling Center shall provide information and counseling to parents of transfer students

and to transfer students who have questions and/or grievances concerning their treatment as transfer students. In any such grievance or dispute other than involving a suspension of more than 10 days or expulsion, if after assistance and counseling have been made available and the applicable procedures of the host district have been completed, the grievance or dispute has not been resolved, the matter shall be referred to the VICC for mediation. VICC will secure the appointment of a mediating panel to conduct non-binding arbitration. Each party to the dispute will select a mediator and the third member will be selected by the first two.

If the dispute still is not resolved, the parties to the dispute may pursue such other legal remedies as are available including judicial enforcement of this settlement agreement, if appropriate.

Where a long-term suspension or expulsion is involved, a transfer student shall have the same rights as a resident student.

X. **Finance**

A. The fulfillment of the obligations of the parties is contingent upon an Order by the Court which establishes adequate funding for the obligations of the parties, consistent with the Agreement in Principle and this Settlement Agreement.

B. The payments for funding under this Agreement shall be as follows:

1. Each year each district shall calculate and certify separately its cost per pupil in a regular school and in a magnet school. The cost per pupil shall be all costs for instruction and support services as reported in the Annual Secretary of the Board Report (RD-5) minus all pupil transportation and food service costs. The

State shall pay these costs for full-time equivalent transfer pupils to the districts membership. The State shall pay separately to the host district the then current cost per pupil less the amount of State aid and trust fund allocation per pupil. However, each host district shall report each transfer pupil as a resident pupil for the purposes of determining all forms of State aid and as part of each host district's eligible pupil count for the purpose of determining trust fund allocations.

Each host district shall estimate the full-time equivalent of transfer pupils to the district's membership and transmit such estimate to the State in September of each year. A correction will be made in January of each year and a final adjustment made in June. Payments shall be made by the State through forward funding paid monthly to each district based upon the September estimate as corrected.

2. No later than 30 days after the entry of the funding order, each school district participating in the Agreement shall irrevocably elect and notify the State of its election of one of the following options:

   a. Each home district shall receive from the State for each student who voluntarily transfers from his or her district to a host district under this agreement one-half of the State aid it would have received had the student remained in his/her home district. This State payment shall be made for each district for a period of five years or any extension of time agreed to by the parties subsequent to the Court's approval of this agreement.

   b. Beginning with the 1984-85 school year each district which sends more transfer pupils than it

receives under this agreement and which thereby experiences a decline in its actual enrollment shall report its second preceding school year's actual enrollment for purposes of determining State aid and as part of each such district's eligible pupil count for purposes of determining trust fund allocations.

3. The cost of the incentives for provisions for voluntary teacher exchanges under Section VI (Faculty), the cost of student recruitment, start-up costs and building modification costs of new magnet schools and expanded magnet costs to schools programs, one-time extraordinary costs (other than hiring of personnel) such as the costs associated with reopening a closed school, the costs of community involvement centers and part-time educational programs, transportaiton of transferring pupils, the operating expense of the VICC, its staff and the Recruitment and Counseling Center and each of its offices, the costs relating to the improvements in educational programs offered by the City Board in Section IV (Quality Education) and such other costs incurred pursuant to this Settlement Agreement shall be paid by such combination of additional State funding pursuant to Court of Appeals for the Eighth Circuit's decision in *Liddell et al* v. *Board of Education et al.,* 677 F.2d 626, 641-642 (8th Cir. 1982), *cert. denied,* 51 U.S.L.W. 3258 (Oct. 5, 1982) (No. 81-2022) and a tax rate increase in the City of St. Louis as shall be ordered by the Court. These payments shall be in addition to the payments set forth in paragraphs a and b above.

4. If any school district obtains desegregation assistance from an outside source, the amount of such funding shall be deducted from the State's funding re-

quirements under this Settlement Agreement. In calculating State payments under subsection a hereof, the State shall determine how much money would have been paid in State aid to the home districts from the State Foundation Funds had the transfer pupils remained in their home districts. That sum shall be applied to the costs of this plan for the purposes set forth in paragraphs 1 and 2 hereof and shall continue to be charged to the Foundation Funds. However, all other costs and payments required under this plan shall not be funded from the Foundation Funds. The State shall not decrease its level of funding for education below the amount of funding established for the 1982-83 fiscal year. Pupils who are accepted in a host district shall not be required to pay any fee to the host district as an out-of-the district pupil.

5. Each district shall prepare a budget setting forth the estimated costs which it will incur as a result of this Settlement Agreement and present said budget to the Court for approval and appropriate funding orders at a date to be determined by the Court.

XI. Other Provisions

A. The City Board shall be invited to join the Cooperating School Districts for the St. Louis Suburban Area, Inc.

B. The Liddell, Caldwell and City Board Plaintiffs are entitled to "reasonable" attorneys' fees and costs of litigation to be paid exclusively by the State after a full hearing on attorneys' fees.

C. Participation in this settlement agreement by any school district shall not be deemed an admission of liablity nor an element of proof of liability in any interdistrict school desegregation case.

D. The parties acknowledge that this settlement agreement may be inconsistent with the May 21, 1980 Order as amended and if so, the terms of the May 21, 1980 Order as amended shall be modified, with the approval of the Court, to be consistent with this settlement agreement.

E. Consistent with the Agreement in Principle, there shall be no court ordered mandatory, interdistrict transfers of white or black students until after a hearing on liability as provided in Section XII; the 23 suburban school districts in St. Louis County will continue to exist as provided in Section XII; the cost of the settlement shall be paid by such combination of State funding and a tax rate increase in the City of St. Louis as shall be provided by the Court as provided in Section X; and black students in suburban school districts that have a minority enrollment of 50% or greater enjoy transfer rights as provided in Sections II and III.

F. The parties recognize that some school districts view the neighborhood school concept as a desireable educational tool. Under this paragraph no district will be required to adopt or abandon a neighborhood school plan and its customary attendance areas. Districts presently operating under a plan established by court order or agreement with any federal agency which addresses the elimination of racially identifiable schools shall not be affected by this paragraph so long as the court order or agreement remains in effect or the district continues to follow the court order or plan.

1. Districts which have exceeded the plan goal (25% black) for the district, but have within the district individual schools with student ratios of more than 50% black shall permit the black students attending those schools the same interdistrict transfer rights as are conferred upon black students attending majority black districts.

2. Districts which are at the plan goal (25% black) or below which have within the district schools with student ratios of more than 50% black shall extend to black students attending those schools the right to transfer intradistrict to another school whose black/white ratio does not exceed 25% black—75% white.

XII. Stay

A. The litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims will be stayed for a period of 5 years to permit full implementation of the provisions of this settlement, including voluntary transfers, magnet schools, quality education, and affirmative action under terms set forth below.

B. The stay will not preclude judicial enforcement of the terms of the settlement agreement.

C. In July of each year, beginning July 1, 1984, each of the school districts that is a party to this settlement agreement shall submit to the parties and to the VICC an annual report describing the racial composition of the faculty and student body in that district, and the steps taken to implement the settlement agreement. Any district which has not met its annual target may include in the report factual observations and conclusions addressed to that issue. In addition, each of the other parties to this agreement shall submit to the parties and to the VICC an annual report describing their activities under this agreement, according to the same schedule.

D. When a district reaches its plan ratio within five years or any extension of time mutually agreed to by the parties, it is entitled to a final judgment declaring that it has satisfied its interdistrict pupil desegregation obligations. A district shall also be entitled to a final judgment if within five years it has enrolled 90% of the additional black students required to satisfy its plan

ratio calculated pursuant to Section II.A.3. so long as the total number of additional black students attending schools in districts with plan ratios (all districts listed in Section II.A.2.b.) equals or exceeds the number of such black students who would have attended such schools had all such districts met such plan ratio. In making this latter calculation, resident students in excess of the plan goal shall not be included and interdistrict transfer students in excess of the plan goal shall be included.[1]

---

[1] Assume districts X, Y and Z each have a current enrollment of 100 students of whom none are black. If no black students move into these districts, each will have to accept 18 transfer students (18 is approximately 15% of 118). Assume, however, that in five years, while District X still has no residential black students, District Y has five residential black students (total enrollment 105), and District Z has 18 residential black students (total enrollment 118).

There are two ways for these districts to satisfy the plan ratio:

A. Each district must have accepted enough black transfers to bring its minority enrollment to 15%. Thus, District X must have accepted 18 black transfer students, District Y must have accepted 13 black transfer students and District Z need not accept any. In other words, the three districts together must have accepted 31 interdistrict transfer students.

B. Assume District X has accepted only 16 interdistrict transfer students (i.e. 90% of the plan ratio of 18). It will, nevertheless, have satisfied its obligation if, for example, District Y has accepted 15 students.

To illustrate:

Dist	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	15	120
Z	100	18	0	118
		23	31	154

In the alternative, District X will have satisfied its obligations if District Y accepts 13 transfer students and District Z accepts two students.

The plaintiffs shall not seek any further interdistrict pupil desegregation relief through litigation.

The school district's only continuing interdistrict obligations under the settlement agreement that are judicially enforceable are to cooperate in the recruitment and promotion of transfers under Sections 4a, c, f, and h of the agreement in principle as implemented by Sections II and IX hereof, to accept transfer students under Section 1 of the agreement in principle as implemented by Section II hereof, and to participate in the magnet program established under Section 2 of the agreement in principle as implemented by Section III hereof in order to reach and maintain the plan goal (25 percent). The Court will relinquish active supervision two years after the five-year period.

E. If a school district does not meet within five years its plan ratio or the numerical requirements as set forth in paragraph D above, then

1. Following completion of the monitoring and negotiation process described in paragraphs F and G below, plaintiffs may renew the litigation involving paragraph 12(c) and their pending interdistrict claims as to any such school district.

2. In such litigation, plaintiffs must establish liability and they shall not seek school district consolidation, dissolution or reorganization and they further shall not seek a remedy beyond the plan goal (25 percent).

To illustrate:

Dist	White Enrollment	Residential Black Enrollment	Transfer Black Enrollment	Total
X	100	0	16	116
Y	100	5	13	118
Z	100	18	2	120
		23	31	154

3. Any remedy shall distribute the burdens of desegregation equitably between the minority and the non-minority students in the school districts involved in the litigation under this paragraph.

4. In devising any remedy the Court will consider the monitor's report. The monitor's report shall not be conclusively binding but shall be entitled to weight.

F. **The Monitor**

1. By October 1, 1987, the plaintiffs and the school districts that have not yet satisfied the numerical requirements of paragraph D or the district's plan ratio above will meet and attempt to agree on the selection of a monitor. If they are unable to do so, each side will select its own monitor and the two monitors will then select a third. The third monitor shall be a person who has not been involved in any aspect of this litigation and has not taken a public position on any aspect of the case.

2. The Monitor shall make an investigation and positive recommendation. The Monitor shall by January 31, 1988 conduct an informal fact finding hearing at which all interested persons shall have an opportunity to be heard.

3. By April 1, 1988 the Monitor shall file a final report. The Monitor's review shall be limited to:

A. Determine the steps taken by the district to meet its plan ratio;

B. Investigate what further steps can be taken to assist the district to meet its plan ratio;

C. Make recommendations as to steps to be taken by the parties to assist the district in meeting its plan ratio and the time period which the Monitor believes is necessary for the district to reach its plan ratio. These recommendations shall be consistent with the obligations of the parties contained in Sections II and III of this agreement.

4. The Monitor shall file his report with the Court. If the district and the plaintiffs agree to follow the recommendations of the Monitor, then those recommendations shall be put in place and the stay extended for the period of time contained in the recommendations.

5. If the district or any plaintiff does not accept the recommendations of the Monitor, the plaintiffs or any of them may proceed to renew the litigation.

6. If plaintiffs fail to renew the litigation within a period of two years from the date of the filing of the Monitor's report, they shall be barred from renewing the litigation unless an extension is mutually agreed to by the district and the plaintiffs.

G. **Negotiations**

Following the issuance of the monitor(s)' report on April 1, 1988, the parties may meet and attempt to agree upon a course of action for each district which course of action may be at variance with the Monitor's recommendations.

Signatories to the Settlement Agreement [omitted]

APPENDIX

Improvement of the Quality of Education Throughout the St. Louis Public Schools and Special Provision To Improve Instructional Quality In Non-Integrated Schools

TABLE OF CONTENTS

A. Improvement of the Quality of Education Throughout the School System 10

Introduction 10

1.0 Instruction 11

1.01 Implement Five-Year Curriculum Improvement Plan 11

1.01.01 Develop and Implement Early Childhood Education Program 14

1.01.02 Expand Opportunities for All-Day Kindergarten 17

1.01.03 Improvement of Instruction in Art 20

1.01.04 Improvement of Mathematics and Science Education in the St. Louis Public Schools K-8 22

1.01.05 Provide Assistance to Secondary Science and Mathematics Teachers 24

1.01.06 Provide Access to the Science Enrichment Project in Cooperation with Saint Louis University 26

1.01.07	Preparing Ninth Graders for Accelerated Courses	28
1.01.08	Expand Range of Opportunities and Access to Cooperative Education and Work Study Programs	30
1.01.09	Gateway Summer Institute	34
1.01.10	Upgrade the Quality of Services for Handicapped Students	37
1.01.11.01	Restore After-School Tutorial Program	40
1.01.11.02	Tri-A Outreach Program for Dropouts and Expelled Students	43
1.01.12	Full-Time Four Year High School for Students with Discipline Problems	46
1.01.13	Restore Art, Music and Physical Education at All Levels of Instruction	49
1.01.14	Expand and Improve Extra-Curricular Activities, Athletic	51
1.02	Improved Specialized Programs	54
1.02.01	Student Leadership	54
1.02.02	Law and Consumer Education	57
1.02.02.01	Oral Communication Program for Eighth Grade	57
1.02.02.02	Citizenship for Primary Grades Program	59
1.02.02.03	Basic Skills Development Through Law-Related Education	62
1.02.03	English as a Second Language	67

1.02.04	Honors Art and the 4th R Gallery	70
1.02.05	Music Center (Honors Music).....	73
1.02.06	College Prep	76
1.02.07	Mass Media	79
1.03	Expand and Improve Access to Community Resources Through Cultural, Educational and Business Institutions ...	82
1.03.01	Pairing and Sharing Program	82
1.03.02	School Partnership Program	86
1.03.03	Springboard to Learning	91
1.03.04	Career Education	93
1.04	Upgrade Library/Media Services.....	96
1.04.01	Improve Access to Media Resources for Instruction.....	99
1.04.02	Audio-Visual Services	101
1.04.03	KSLH; Cable TV	103
1.04.04	Develop Computer Science and Technology Programs	106
1.05	Lower Pupil-Teacher Ratios to County Average	109
2.0 Instructional Support		111
2.01	Restore Staff Development Unit, Including Provision of Opportunities for Staff to Keep Abreast in Their Field	111
2.01.01	Expansion of the Educational Intervention Plan for More Effective Schools	115

2.02 Improve the Quality of Food Services and Expand the Breakfast Program 118

2.03 Upgrade Safety and Security Services ... 120

2.03.01 Upgrading of Roving Security Guard Services for Elementary Schools 120

2.03.02 Upgrading of Security Guard Services in All Secondary Schools 122

2.03.03 School Crossing Guards 124

2.03.04 Upgrading the Incident/Vandalism Reporting System 126

2.04 Strengthen School-Parent-Community Communication and Involvement 128

3.0 Management Support 130

3.01 Strengthen Capabilities of the Public Affairs Unit 130

3.02 Strengthen the Long-Range Planning Capabilities of the District 133

3.03 Increase the Capability of the Desegregation Monitoring Office to Provide Planning and Monitoring Service 136

3.04 Increase the Capabilities of the Following Management Support Units to Provide Timely, Comprehensive Support Services: 138

3.04.01 Purchasing, Warehouse, Pick-Up and Delivery of Supplies and Materials 138

3.05 Enhance the Capabilities of the Personnel Office to Provide Personnel Support 140

3.05.01 Office of Personnel Data and Reports ... 140

4.0 Facilities Components 143

4.01 Facilities Component Objectives 143

4.02 Resources to Carry Out Program of Correction and Deferred Maintenance, Renovation, Modernization and Improvements 153

4.03 Facilities Related Needs Identified in Various Components Which Are Beyond the Scope Identified in 4.01 and 4.02 161

4.04 Additional Facilities Needs in Non-Integrated Schools Which Are Beyond the Scope of Work Identified in 4.01 through 4.03 163

B. Special Provisions for Schools Which Remain Non-Integrated.

Introduction 165

1.01 Lower Pupil Teacher Ratio in Non-Integrated Schools 165

2.01 Instruction 168

2.01.01 Coordination of Instructional and Motivational Programs in Non-Integrated Schools 168

2.01.02 After School Programs of a Remedial and Enriching Nature 170

2.01.03 Saturday Classes for All Pupils - The Learning is Fun Today (L.I.F.T) Program 172

2.01.04 Summer Educational Experience - The S.E.E. Program 174

2.01.05 A Motivational/Recognition Experiences Component - M.E.R.R.Y. Program (Motivational Experiences for Recognition and Reward for Excellence in Youth 176

2.01.06 Schools of Emphasis 178

2.01.07 Student Academy Centers 181

2.01.08 Leadership Skills Program 183

2.01.09 Role Model Experiences 185

2.01.10 Parents and Staff Seminars - P.A.S.S. Program 187

2.01.11 Parents as Teachers 189

2.01.12 Peer Tutoring 193

2.01.13 Shared Experiences Program 195

2.01.14 Cultural Curriculum Enrichment 197

2.01.15 Enrichment Labs 199

3.01 Facilities Needs in Non-Integrated Schools 200

C. Voluntary Plan Components - Magnet Schools and Support Programs 201

Introduction 201

2.0 Themes and Student Admission 202

3.0 Planning and Evaluation 203

4.0 Synopsis of Magnets by Year 204

4.01 Magnets Existing in 1982-83 204

4.02 First Phase - 1983-84 205

4.03 1984-85 207

4.04 1985-86 208

4.05 1986-87 210

4.06 Phase-In Over a Five Year Period 211

5.0 Cost of Voluntary Plan Magnets 212

6.0 Expansion of Other Programs to Include County Students 217

6.01 Rationale 217

6.01.01 Part-Time Programs 217

6.01.02 Specialty Programs 217

7.0 Description of Existing and Proposed Magnets 218

7.01 Academic and Athletic 218

7.02 Academy of Basic Instruction I 219

7.03 Academy of Basic Instruction II 219a

7.04 Academy of Basic Instruction III 220

7.05 Academy of Basic Instruction IV 221

7.06 Academy of Mathematics, Science and Applied Technology 222

7.07 Action Learning/Career Exploration ... 224

7.08 Center for Expressive and Receptive Arts 225

7.09	Classical Junior Academy	226
7.10	Foreign Language Experience School	228
7.11	Foreign Language Secondary	229
7.12	Health Careers High School	230
7.13	Individually Guided Education I	232
7.14	Individually Guided Education II	233
7.15	Individually Guided Education Middle	234
7.16	Investigative Learning Middle	235
7.17	Investigative Learning Center	236
7.18	Management Center	237
7.19	Metro High School	238
7.20	Montessori I	239
7.21	Montessori II	240
7.22	Naval Junior ROTC	241
7.23	Visual and Performing Arts Center	242
7.24	Visual and Performing Arts Middle I & II	244
7.25	Visual and Performing Arts High School	246
7.26	Middle Military Academy	248
7.27	Classical Academy of Law, Government and Humanities	249
7.28	Mass Media High School	250
7.29	Academic and Athletic High School	251

7.30 Microcomputer Middle 252

7.31 Middle School of Mathematics, Science and Applied Technology 253

7.32 Career Education 254

7.33 Law/Consumer Education 255

7.34 Pairing and Sharing 256

7.35 Partnership Program 257

7.36 Springboard to Learning 258

7.37 English as a Second Language 259

7.38 Honors Art and the 4th R Gallery 260

7.39 Music Center 261

7.40 Student Leadership 262

8.0 Magnet and Interdistrict Support Units 263

8.01 Curriculum Development Units 263

8.02 Ethnic Heritage Program 265

8.03 Recruitment and Counseling Center 269

A. Improvement of the Quality of Education Throughout the School System

Introduction

Consistent with the terms of the Agreement in Principle, the City Board has analyzed the needs of the school system and proposes herein the measures it would take to improve the quality of education in all of its schools. There are needs which relate to the improvement of curriculum and the quality and range of learning experiences to which students have access and there are critical needs which relate to the instructional and management support services which are required to ensure that all students have access to an education which is consistently high in quality. There are also critical needs which relate to the condition of the school system's aging school facilities. These needs must be addressed to ensure that the physical learning environment is supportive of an improved instructional program. Those needs which relate to the improvement of the quality of education throughout the school system are identified in this section as are the measures and resources requfred [sic] to address those needs.

* * *

[REMAINDER OF APPENDIX TO SETTLEMENT AGREEMENT, PROVIDING DETAILED DESCRIPTION OF EACH PROGRAM AND ITS COST IS OMITTED.]

APPENDIX D

[1-129] Jerome Jones, Proponent Signatories' Witness, Sworn

The Court: You may inquire, Mr. Brostron.

DIRECT EXAMINATION

By Mr. Brostron:

Q. Would you state your name, please?

[1-130] A. Jerome Jones.

Q. And what is your occupation, Doctor Jones?

A. I'm an educator and presently superintendent of schools in the City of Saint Louis.

Q. And when did you take over that position?

A. March 1st, 1983.

Q. Would you briefly give us your educational background, Doctor Jones?

A. Yes. I have a Ph.D. in urban planning and policy development, as well as several degrees in social sciences. I began my educational career as a teacher in Washington, D.C. I worked as an administrator in the Philadelphia school system, administrator for the New Jersey Department of Education, the superintendent of schools in Providence, Rhode Island, and Stamford, Connecticut.

Q. In the course of your employment activities, have you ever participated in any desegregation planning?

A. Yes. While an employee of the New Jersey Department of Education, I generally participated in desegregation activities of the State Department of New Jersey regarding the 601 school districts in that State. I also developed desegregation plans for the City of Providence and the City of Stamford, Connecticut.

* * *

[1-150] **Cross-Examination**

By Mr. Dierker:

Q. Doctor, so that the record is clear, are you an expert in school desegregation?

A. No, I'm not an expert.

Q. Directing your attention to the financial provisions of the proposed settlement agreement, did you participate in the negotiation of those provisions?

A. No, I did not. Perhaps I can ask a question. You're talking about the agreement among the districts relative to the financial issues for interdistrict transfers?

Q. I'm referring to Section X of the agreement, the settlement agreement, Exhibit 1, which is in front of you.

A. All right.

* * *

[1-151] The Witness: I was involved in discussions which led to these agreements.

Q. (By Mr. Dierker) Do you know who originated the idea that the funding would be exclusively from the state and a tax increase by the City—in the City of Saint Louis?

A. No, I do not know who exclusively originated the idea.

Q. Well, did it originate with the City Board?

A. I'm not sure. I'm not sure.

Q. So it could have originated with the City Board to your knowledge?

A. I'm not sure of the source of the origin of those proposals.

* * *

[1-152] Q. (By Mr. Dierker) Doctor, I've handed you documents which have previously been marked for identification as City Exhibits G and H; could you identify Exhibit G for us?

A. Exhibit G is a summary of the proposed costs of the quality ed section of this proposal—agreement.

Q. Do you know how that document was prepared?

A. Yes, I do.

Q. Could you tell us how that was prepared?

A. This document was prepared in conjunction with staff members and me in the Saint Louis school—

* * *

Q. (By Mr. Dierker) Doctor, I believe you were telling us how those were prepared?

A. These are the cost estimates for those items which are contained in Exhibit 1 and Exhibit 2, as revised.

[1-153] Q. All right. Those items—you said Exhibit 1—Exhibit G, does Exhibit G reference transportation expenses or County magnet school expenses?

A. No, it doesn't.

Q. Could you identify and describe how Exhibit H was prepared, if you would?

A. Exhibit H is a five-year projection of costs as it relates to the proposed agreement and each year is discretely broken out in terms of the anticipated costs as of the time this document was prepared.

Q. All right. There are some differences between the numbers for year one of the plan, as represented in Exhibits G and H, and as represented in Exhibits 2 and 3; is that correct?

A. Yes.

Q. In other words, we're only going to spend $87 million in year one under the revision; is that correct?

A. That's correct.

Q. Doctor, these documents, G and H, were prepared by employees of the City Board for the use of yourself and others within the city and reviewing and evaluting the settlement agreement; is that correct?

A. Yes. These were documents which were prepared to give us some idea as to what the cost factors were related to the programs.

Q. Okay. so in summary, at least one of your estimates was that **[1-154]** for only part of the plan, an aggregate cost over five years of $836 million is predicted; is that correct?

A. That's correct.

Q. Were there any discussions or projections or thoughts in the negotiation process concerning what happens at the end of five years?

A. No. Our concern was developing cost estimates relative to the proposed items for the five-year period.

Q. Is it your understanding that the settlement agreement contemplates that any funding ordered by this court would remain in place indefinitely even after the five years?

A. No, but that there would be review at appropriate times to determine levels of funding.

Q. When you say "review at appropriate times," do you mean that you might come back to court five years from now and ask the court for more money?

A. From year to year.

Q. From year to year. Doctor, you are, of course, aware that the City Board is an interdistrict plaintiff in this case as it presently is comprised; are you not?

A. Yes, I am.

Q. Is this settlement agreement, in your understanding, designed to resolve the interdistrict claims alleged by the City Board?

A. The City itself, the City school board was originally the defendant, if you'll recall, and it's my understanding that this **[1-155]** document is designed to deal with issues of segregation—performance, segregation, and the present vestiges within the City of Saint Louis.

Q. Exclusively within the City?

A.I don't have any information as to whether or nor it was intended to be exclusive. But my understanding is that the major emphasis here is that of resolving problems of segregation within the City of Saint Louis.

Q. To your knowledge, does the City Board make any attempt to acquaint the citizens of the City of Saint Louis in advance with the possible magnitude of the cost of this settlement agreement?

A. My recollection is that there were a number of meetings in which this issue was discussed. The press has reported on it widely, and there were opportunities for the public to get information regarding these events.

Q. Doctor, I believe you testified that the cost estimates for the settlement agreement, and particularly—let's refer to what I will call the appendix—those costs are separate and apart from the costs of the intracity plan; is that correct?

A. Yes.

Q. So you would contemplate the continuance of the intracity plan even if this settlement agreement is approved?

A. These proposals are beyond the present level of activities which are in the City of Saint Louis.

[1-156] Q. I realize that. But would you expect that the present level of activity—are you familiar with the present intracity plan?

A. Yes.

Q. Would you expect that to continue after approval of this settlement agreement?

A. Yes.

Q. And would you expect that to be funded by order of court after the approval of this settlement agreement?

A. There are areas which will eventually result in reconciliation. For instance, the costs involved in magnet schools are only for the expansion of the magnet school operation, and only to that extent would there be additional costs.

So in point, what I'm saying is: for instance, if, in fact, a substantial number of students do enter Saint Louis to participate in the magnet school programs, only the additional costs beyond those enrollments which are presently experienced by Saint Louis would be attributable as new costs.

This would not be a duplication of that which exists presently.

* * *

[71] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. Lowell Jackson.

Q. And where do you reside?

A. City of Saint Louis.

Q. And what is your occupation?

A. Deputy tax assessor.

Q. And what does that entail?

A. That entails the day-by-day supervision of the assessor's office under the direction of the assessor.

Q. How long have you been with the assessor's office at the City?

A. Thirty-three years.

[72] Q. And what have you done in the course of those 33 years?

A. I've done just about every appraisal type of work within the office—

Q. With respect to the assessor's office, excuse me.

A. Within the assessor's office, yes. I've been an appraiser, a supervisor, assistant assessor.

Q. Okay. And essentially, could you describe briefly what the Office of the Assessor does?

A. The assessor's office is charged with the appraisal for assessment purposes of all real and personal property within the City of Saint Louis.

Q. And does the assessor also have any dealings with tax bills?

A. Yes. The assessor's office is charged with the preparation of tax bills.

Q. And do those tax bills include only taxes payable to the City of Saint Louis?

A. They pertain to all the taxing entities that are within the City, such as the schools, Metropolitan Sewer, and State.

* * *

[90] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. George Otte.

Q. And what is your occupation?

A. Professor of urban affairs at Saint Louis University.

Q. And do you reside in the City?

A. Yes, I do.

Q. And have you been a candidate for any public office?

A. I was a candidate for the recent City School Board election.

* * *

[94] Q. I mean, when you studied the City's fiscal affairs, what have you looked at?

A. Well, basically, you could divide it into two areas, what you could call the City's own source revenue or its own budget which it has full control over and which there are only limitations as imposed by State statute or City charter. And then another area which consists of, of Federal grants, some State grants, which are limited in terms of what the City may do with the funds, and usually go through a separate budget process. And I tend to separate those two mainly because of the procedural matters involved.

Q. In the course of your studies, have you had occasion to become familiar with the tax structure subsisting in the City of Saint Louis?

A. Yes, I have.

Q. Does that include the property tax?

A. Yes.

Q. Now, Doctor, you've stated that you've reviewed the settlement agreement, and the financing provisions in particular. Based on your review of those provisions and the other documents that you've identified, as well as your own studies, do you have an opinion concerning whether the financing provisions of the proposed settlement agreement would be—what, if any, effect those provisions would have upon the City of Saint Louis if they were implemented?

[95] A. I think they would be largely harmful to the City of Saint Louis in large measure because it would be imposing an additional tax on the City without a concomitant rise in revenue for the City, and recent studies that tend to be of a broad, what we call aggregate nature, indicate that higher taxes tend to have a negative effect on governmental jurisdictions. In other words, higher taxes tend not to promote economic growth, do not tend to promote a vital community; and as a matter of fact, in reviewing some material before I came here, I was reading what the commission on New York City's bankruptcy had to say and they, again, and have verified what we are realizing now, that higher taxes tend to be counterproductive in many respects, and recommended a lowering of taxes in New York City as a means of preventing further business migration and population migration.

Q. Okay, now your opinion with regard to these effects is based on the settlement agreement proposal as written, which contemplates a court-ordered tax increase, property tax increase; is that correct?

A. Right.

* * *

[99] Q. Doctor, with respect to the funding provisions of the settlement agreement, they do not specify what amount of court-ordered property tax would be required. Do you have an opinion on whether any amount of court-ordered property tax increase would have an effect upon the citizens of the City?

Mr. Gianoulakis: Again, I object by "any amount." Mr. Dierker, do you mean one cent?

Mr. Dierker: By "any amount," I mean any amount, Your Honor, whether one cent or a million dollars.

The Court: The question, I think, is clear; objection is overruled.

The Witness: It would appear to me that you'd tend to have some type of scale. I think the higher the amount, the greater the potential for ill effects on City revenue, City population, the things we were just talking about, the abandoned property, and possibly the smaller the amount, possibly the lesser the impact.

[100] Q. (By Mr. Dierker) Doctor, if the tax rates in the City instead of being increased were simply to be held constant while tax rates in the County went down, do you have an opinion as to what, if any, effect that would have on the citizens of the City?

A. Well, it's basically attaining the same result with a little different mechanism. Instead of increasing the taxes in the City, you'd be effectively keeping those constant, decreasing the County. And there's the same potential for what you might call revenue impacts in the City if, for no other reason—and then Saint Louis County becomes much more attractive either for housing, for investment, for a variety of things than Saint Louis City might.

* * *

[105] Redirect Examination

By Mr. Dierker:

Q. Doctor, assuming that tax—property tax in the City of Saint Louis were increased by order of court in any amount, in your opinion, would that have an effect on the City's ability to raise revenue, new revenue?

A. I would think so, especially in light of the Hancock Amendment and in light of, well, the City is well now at it's legal limits in almost all of it's taxing sources, that it would require a vote of the people. And I would not envision the voters being very receptive to an additional tax increase having just had one, possibly, imposed on them themselves. If we've learned anything in the past few years about taxes and voting, it's that people tend to be not too receptive to higher taxes. That's what Proposition-13 told us **[106]** in California, Proposition-2 ½ in Boston, and the Hancock Amendment. And I think maybe they're giving us a sign.

* * *

[4] Direct Examination

By Mr. Dierker:

Q. Would you state your name, please?

A. My name is Stephen Mullin.

Q. Where are you employed?

A. I'm employed by the City of Saint Louis.

Q. And in what capacity?

A. I'm the City's budget director

Q. And how long have you been the City's budget director?

A. Three weeks.

Q. And prior to—

The Court: We like to get them when they're fresh.

Q. (By Mr. Dierker) Immediately prior to becoming the City's budget director, what was your employment?

[5] A. I worked since August as a financial consultant to the Mayor.

Q. What is your academic background, sir?

A. I have a Bachelor's degree from Harvard University in economics and I have a Master's degree from the University of Pennsylvania in economics with a specialty in public finance, and education finance, and health care finance and labor economics. And I am currently finishing my dissertation for a Ph.D. in economics at the University of Pennsylvania.

Q. Have you had occasion to study public finance, particularly school finance, other than as a student?

A. Yes. I worked with the State School Advisory Panel, State of Connecticut on their school finance Constitutional case in 1977, '78 and '79, and I worked with an expert witness for the State of—as an associate to an expert witness for the State of Maryland in 1980 for their State Constitutional school finance case.

Q. And did the Maryland litigation involve the challenge to the system of school finance in the State of Maryland?

A. Both the Connecticut case and the Maryland case did, yes.

Q. You did not, however, testify in either of those?

A. I did not.

Q. What are your duties as budget director of the City?

A. To develop a budget and present the budget to the Board of Estimate and Apportionment at 1:30 today and to develop

revenue projections for the City to monitor the expenditures and revenues [8] and the public utilities divisions of the City.

Q. Now, direct your attention to Exhibit C; can you see it sitting against the wall over there?

A. Yes, sir.

Q. Have you had occasion to view that exhibit previously?

A. Yes, I have.

Q. If increases in the property tax levy occurred at any of the levels identified on Exhibit C—

* * *

Q. (By Mr. Dierker) What, if any, effect on the City's ability to obtain new revenue would there be if there were tax levy increases in any of the ranges shown on Exhibit C?

A. I believe there would be two effects. One is the likelihood if any of these tax rate increases are put through, I believe there will be a decrease, a significant decrease in the likelihood of voter approval of any other fee increases—fee or tax increases that would be put on the ballot in future years. [9] Second, I suspect there would be an effect on the growth of our current sources of revenue given the present tax rate or fee rates. In other words, the tax basis would not grow or might even shrink.

Q. Have you had occasion to study the effect of relative property tax rates on the decisions of businesses concerning their locations?

A. Yes, I have.

Q. On what occasion?

A. First in study—in public finance study, and second, as a research associate for the Governor's Tax Commission for tax reform in the State of Pennsylvania; I was a member of the Philadelphia area task force.

Q. What effect, if any, do relative property tax rates have on decisions of businesses concerning their locations?

A. Businesses, there tends to be a widely viewed, widely accepted position that there is little or no effect on business location; however, when that is broken down, it seems that evidence suggests more. So there is little or no effect when a business is trying to decide on a location among regions; but once within a region or once within a specific, for example, S.M.S.A., the local tax rates and, basically, the services of different jurisdictions within the S.M.S.A. provide, become very important factors for business location.

Q. In general, is the property tax an ideal mechanism to fund **[10]** school district operations?

A. I would say, as my opinion on this and my feeling on this is that the property tax per se is not an evil tax. There is a newer—there is a new train of thinking in the literature that suggests the property tax itself is not an unjust and not an unfair inequitable tax or regressive tax; however, that supposes, and it's cautioned in the literature, that's cautioned, that suggests, that presupposes fair administration and fair assessment which is not exactly the case in many or any jurisdictions in the country. I think the major source is—the major problem with calling it an ideal tax is that as long as—if there's any form of tax that will exacerbate current disparities among jurisdictions within the same region, within the same S.M.S.A., that there will be efficiency problems and there will be equity problems involved with increases in the tax.

Q. In the property tax?

A. In the property tax, yes.

Q. Do you have an opinion as to what, if any, effect on the City there would be if a tax were imposed only in the City for the purposes of funding the proposed settlement agreement in this case?

A. For efficiency purposes—well, from the City's point of view, it would be very, very tough, clearly. The City would be forced to have severely limited ability to raise new taxes, as I mentioned earlier, for strict, what I would consider efficiency [11] terms, tax levied in the City alone, as I mentioned earlier, would exacerbate existing disparities among jurisdictions in the Saint Louis area and, hence, cause further locational and business investment decisions and inequities.

As far as the inequity side of the tax, I would not be convinced that any form of ability to pay principal in measuring equity would support a tax levy—increase in the property tax levied only in the City.

Q. Why is that, with respect to the equity?

A. Well, the ability to pay principal suggests that the incidents or burden of taxation ought to fall more heavily on either wealthier people or wealthier jurisdictions, and this would clearly not be the case.

* * *

CITY OF ST. LOUIS ASSESSED VALUE FOR 1983

REAL PROPERTY	$1,111,000,000
PERSONAL PROPERTY	325,000,000
MERCHANTS & MANUFACTURES INVENTORY	294,000,000
TOTAL	$1,730,000,000

AMOUNT OF REVENUE NEEDED	$100,000,000	$75,000,000	$50,000,000	$25,000,000
ADDITIONAL RATE NEEDED	$5.78	$4.34	$2.89	$1.45

ASSESSED VALUE	TAX BILL INCREASE TO PROVIDE ADDITIONAL REVENUE			
$100,000	$5780	$4340	$2890	$1450
$50,000	$2890	$2170	$1445	$725
$25,000	$1445	$1085	$722	$362
$15,000	$867	$651	$433	$218
$10,000	$578	$434	$289	$145
$5000	$289	$217	$145	$73

SAINT LOUIS PUBLIC SCHOOLS

BUDGET OFFICE

March 23, 1983

MEMORANDUM

To: Jerome B. Jones, Superintendent of Schools
Louis H. Ratz, Jr., Deputy Superintendent/Management
Ronald Stodghill, Deputy Superintendent/Instruction

For your information and review we have prepared and enclose your personal copies of the "New Voluntary Desegregation Plan" budget for FY1983-1984 through FY1987-1988.

Each budget document consists of two parts; Part A delineates the financial resources and Part B the human resources that will be required to support the New Voluntary Desegregation Plan.

It is our understanding that these resource requirements are in addition to the Desegregation Plan Budgets for FY1983-1984 as published on January 7, 1983, and amended January 31, 1983.

Although the enclosed budget documents are for Internal Discussion Only and subject to further verification and reconciliation, in our opinion they fairly represent all budget amendments submitted to this office as of the close of day March 22, 1983.

Respectfully submitted,

Robert H. Heet

ROBERT H. HEET
Director of Budgets

RHH:cb

Enclosures

cc: Glenn A. Campbell ✓
Joseph W. Schwarzbauer
John E. Engel

911 Locust Street • St. Louis, Missouri 63101 • Area Code (314) 231-3720

EDITOR'S NOTE

PAGES A162 through A 169 WERE POOR HARD COPY AT THE TIME OF FILMLNG. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
A. IMPROVEMENT OF QUALITY EDUCATION THROUGHOUT THE SYSTEM						
	INSTRUCTION					
IMPLEMENT FIVE YEAR CURRICULUM IMPROVEMENT						
A.1.01	INSTR PLAN & PROG DEVEL ADM	397,441	401,021	404,602	411,763	415,344
A.1.01	INSTR PLAN & PROG DEVEL	606,374	0.00	0.00	0.00	0.00
	5-YEAR IMPROVE PLAN TOTALS	$1,003,515	$401,021	$404,602	$411,763	$415,344
A.1.01.01	PRE-SCHOOL CENTERS	195,155	953,242	1,304,471	1,329,989	1,727,454
A.1.01.02	KINDERGARTEN	405,[illegible]	5,543,[illegible]	5,602,119	6,748,912	5,777,339
A.1.01.03	INSTR PLAN & PROG DEVEL ADM	0.00	7,327	13,631	0.00	0.00
IMPROVEMENT OF MATHEMATICS EDUCATION IN THE ST. LOUIS PUBLIC SCHOOLS K-8						
A.1.01.04	ELEMENTARY SCIENCE K-8	5,481,[illegible]74	4,933,142	4,982,233	5,077,[illegible]53	5,[illegible]14,501
A.1.01.04	ELEMENTARY MATH K-8	1,740,[illegible]81	1,[illegible]12,800	1,193,361	1,802,993	1,[illegible]46,[illegible]05
	IMP MATH ED TOTALS	$7,221,955	$6,120,942	$6,175,594	$6,880,076	$6,160,506
A.1.01.05	INSTR PROG PLAN DEV ADM	6,327	195,765	197,452	200,947	202,694
A.1.01.06	SCIENCE ENRICHMENT PROJ	199,735	308,997	414,129	418,137	421,773
A.1.01.07	INSTR PLAN & PROG DEV ADM	0.00	161,429	162,861	165,742	167,185
EXPAND RANGE OF OPPORTUNITIES & ACCESS TO COOPERATIVE EDUCATION & WORK STUDY PROGRAMS						
A.1.01.08	VOC ED ADMINISTRATION	62,529	59,117	59,644	60,700	61,228
A.1.01.08	VOC SCH WORK STUDY ADM	65,276	64,430	65,006	66,156	66,731
A.1.01.08	VOCATIONAL SCHOOL WORK STUDY	1,725,096	1,797,534	1,890,212	2,001,770	2,097,128
A.1.01.08	OCC HOME ECONOMICS	240,398	251,286	253,530	258,017	260,261
A.1.01.08	BUSINESS EDUCATION	193,316	106,353	107,303	109,202	110,151
A.1.01.08	DISTRIBUTIVE EDUCATION	40,691	39,322	39,673	40,548	41,779
	EXPAND COOP ED/WK STDY TOTALS	$2,647,306	$2,318,042	$2,415,368	$2,536,393	$2,637,269

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
SUMMER SCHOOL PROGRAMS						
A.1.01.09	SUMMER SCHOOL PROG	71,227	71,868	72,510	73,793	74,435
UPGRADE THE QUALITY OF SERVICES FOR HANDICAPPED STUDENTS						
A.1.01.10	SPECIAL EDUCATION ADMIN	2,697,837	1,504,142	1,076,872	1,661,431	1,024,261
A.1.01.10	PYSCHOLOGISTS	861,927	869,692	877,457	892,987	990,752
A.1.01.10	BEHAVIOR DISORDERS	1,483,553	1,661,930	1,712,837	1,565,571	1,578,510
A.1.01.10	LEARNING DISABILITIES	2,140,479	2,408,395	2,415,895	1,949,193	1,825,878
A.1.01.10	MENTALLY RETARDED	3,525,719	8,159,645	7,142,415	5,614,319	5,163,726
A.1.01.10	INTINERANT/RESOURCE TEACHERS	512,412	674,737	586,646	599,329	671,270
A.1.01.10	SPEECH CORRECTION	922,219	1,198,596	1,175,678	960,616	911,672
A.1.01.10	SIGHT CONSERVATION	139,639	215,747	284,806	289,929	292,450
A.1.01.10	EARLY CHILDHOOD PROGRAM	2,467,721	2,642,730	2,797,354	2,835,365	2,860,020
A.1.01.10	HEARING IMPAIRED	3,324,899	892,787	985,407	957,998	1,257,693
A.1.01.10	DELINQUENT TEACHING	339,574	334,625	315,352	340,713	313,676
A.1.01.10	ORTHOPEDICS TEACHING	6,431,891	542,259	442,815	449,923	454,904
A.1.01.10	ATTENDENCE WELFARE	404,783	409,430	413,976	417,379	423,016
A.1.01.10	HEALTH PROFESSIONALS	424,855	428,482	432,250	437,847	441,673
	HANDICAPPED STUDENTS TOTALS	$24,866,496	$22,133,506	$20,675,135	$18,374,629	$17,948,901
A.1.01.11.01	AFTERSCHOOL PROGRAMS-S	1,314,268	2,332,514	2,393,157	2,332,014	2,230,692
A.1.01.11.02	DEPUTY SUPT/INSTRUCTION	599,402	1,439,144	1,649,562	1,669,598	1,606,436
A.1.01.12	MS FOR STUDENT DISCIPLINE	351,489	1,216,542	1,618,472	1,642,692	1,640,195
RESTORE ART, MUSIC & PHYSICAL EDUCATION AT ALL LEVELS OF INSTRUCTION						
A.1.01.13	ELEMENTARY INSTR MUSIC	2,672,502	970,450	950,762	967,589	976,093
A.1.01.13	ELEMENTARY VOCAL MUSIC	2,134,299	2,344,076	2,365,905	2,406,864	2,427,793
A.1.01.13	ELEMENTARY PHYSICAL ED	2,179,196	2,115,493	2,127,262	2,164,913	2,183,738
A.1.01.13	ELEMENTARY ART	1,935,826	2,145,942	2,165,102	2,203,423	2,222,593
	ART,MUSIC,PHYS. ED TOTALS	$8,921,823	$7,575,971	$7,608,131	$7,742,789	$7,810,117

UDGET PLANNING AND DEVELOPMENT DIVISION
OR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
EXPAND & IMPROVE EXTRA-CURRICULAR ACTIVITIES						
A.1.01.14	ATHLETIC ADMINISTRATION	16,794	20,001	20,260	20,619	20,798
A.1.01.14	INTERSCHOLASTIC COMPETITION	415,286	952,992	1,043,666	1,062,138	1,071,374
	EXTRA-CURRICULAR TOTALS	$432,080	$973,073	$1,063,926	$1,082,757	$1,092,172
A.1.02.01	STUDENT LEADERSHIP	97,950	79,503	78,518	79,908	64,784
A1.02.02.01	ORAL COMMUNICATION PROGRAM	167,998	169,511	171,025	174,052	175,565
A1.02.02.02	CITIZENSHIP FOR PRIMARY GRADES	119,394	133,954	135,150	137,542	138,738
A1.02.02.03	BASIC SKILLS	122,698	132,852	134,038	136,410	138,838
A.1.02.03	ENGLISH AS A SECOND LANGUAGE	367,916	426,534	464,411	506,263	553,979
A.1.02.03	HONORS ART	120,696	120,954	120,198	122,325	123,389
A.1.02.05	HONORS MUSIC	481,774	376,413	367,570	328,075	330,928
A.1.02.01	COLLEGE PREPARATORY PROGRAM	119,902	730,701	1,256,862	1,762,477	2,265,557
A.1.02.07	MASS MEDIA SEC PROGRAM	344,654	375,263	402,694	382,909	356,129
A.1.02.01	PAIRING & SHARING	170,914	172,413	182,451	195,152	206,578
A.1.02.02	PARTNERSHIP PROGRAM	331,093	440,779	517,253	563,180	544,337
A.1.02.02	SPRINGBOARD TO LEARNING	73,941	123,702	221,641	225,563	230,416
A.1.02.04	CAREER EDUCATION	295,571	398,267	399,232	398,121	399,544
UPGRADE LIBRARY/MEDIA SERVICES						
A.1.04	LIBRARY RESOURCE CENTER	1,527,737	1,116,630	1,105,692	1,119,512	1,129,247
A.1.04	ELEMENTARY LIBRARY SERVICES	3,721,949	6,440,225	6,325,977	5,853,741	5,904,643
A.1.04	SECONDARY LIBRARY SERVICES	1,470,656	2,695,876	2,426,914	2,469,869	2,491,346
	LIBRARY SERV TOTALS	$6,716,028	$10,252,791	$9,858,583	$9,443,122	$9,525,236
A.1.04.01	DATA MANAGEMENT SERVICES	118,355	119,422	230,098	119,170	120,207
AUDIO VISUAL SERVICES						
A.1.04.02	AUDIO-VISUAL ADMINISTRATION	72,219	72,870	73,520	74,822	75,472
A.1.04.02	AUDIO-VISUAL SERVICES OTHER	265,372	207,283	219,304	320,453	288,439
A.1.04.02	AUDIO-VISUAL SVCS-PHOTOGRAPHER	21,223	21,415	21,696	21,988	22,179
	AUDIO VISUAL TOTALS	$358,814	$301,568	$314,430	$417,263	$386,090

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
KSLH; CABLE TV						
A.1.04.03	RADIO STATION KSLH	148,388	399,759	209,396	233,872	289,266
A.1.04.03	CABLE TV PLAN COMM	43,901	195,639	161,364	200,038	291,813
	KSLH/CABLE TV TOTALS	$192,289	$595,389	$370,760	$433,910	$581,079
A.1.04.04	DATA MANAGEMENT	3,241,032	3,084,758	8,145,886	531,011	535,628
LOWER PUPIL-TEACHER RATIOS TO COUNTY AVERAGE						
A.1.05	KINDERGARTEN	500,779	505,291	509,802	518,825	523,337
A.1.05	ELEMENTARY GENERAL INSTR 1-5	6,095,393	8,843,254	8,922,213	9,080,129	9,159,086
A.1.05	MIDDLE GENERAL INSTRUCTION	1,745,786	3,755,928	3,789,463	3,856,533	3,890,068
A.1.05	SECONDARY GENERAL INSTRUCTION	2,835,702	7,106,971	7,170,426	7,297,336	7,360,791
	LOWER PTR TOTALS	$11,141,664	$20,211,446	$20,391,904	$20,752,823	$20,933,282
	INSTRUCTION TOTALS	$73,255,448	$91,481,834	$96,514,222	88,359,335	$88,948,793
	INSTRUCTIONAL SUPPORT					
RESTORE STAFF DEVELOPMENT UNIT, INCLUDING PROVISION OF OPPORTUNITIES FOR STAFF TO KEEP ABREAST IN THEIR FIELD						
A.2.01	STAFF DEVELOPMENT-ADM	176,441	178,031	179,621	182,800	184,389
A.2.01	STAFF DEVELOPMENT	974,339	976,397	985,115	1,002,550	1,011,268
	STAFF DEVELOP UNIT TOTALS	$1,150,780	$1,154,428	$1,164,736	$1,185,350	$1,195,657

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
A.2.01.01	PROJECT SHAL	789,348	1,656,950	1,545,421	1,782,923	1,285,802
A.2.02	FOOD SERVICE	832,500	840,000	847,500	862,500	870,000
A.2.03.01	ELEMENTARY SECURITY GUARD SERVICE	421,158	594,086	600,746	617,761	616,695
A.2.03.02	SEC SECURITY GUARD SERVICE	1,021,233	965,246	976,350	1,005,332	1,002,271
A.2.03.03	SCHOOL CROSSING GUARDS	563,089	559,258	564,251	574,238	579,231
A.2.03.04	SPECIAL SERVICES ADMINISTRATION	26,731	25,796	26,027	26,487	26,718
A.2.04	PARENTAL INVOLVEMENT	630,276	602,467	607,846	618,604	623,983
	INSTRUCTIONAL SUPPORT TOTALS	$5,626,115	$6,398,231	$6,332,877	6,672,295	$6,200,357
	MANAGEMENT SUPPORT					
A.3.01	PUBLIC AFFAIRS	421,029	704,382	739,649	819,375	928,930
A.3.02	LONG RANGE PLANNING	413,754	316,692	317,509	335,134	327,692
A.3.03	DESEG PLANNING/MONITORING OFC	43,917	43,753	44,143	44,924	45,315
PURCHASING,	WAREHOUSE, PICK-UP & DELIVERY (BOARD-OWNED VEHICLES)					
A.3.04.01	WAREHOUSE PRINTED FORMS	5,550	5,600	5,650	5,750	5,800
A.3.04.01	PURCHASING OFFICE	104,107	107,062	108,018	109,930	110,886
A.3.04.01	TRANS PICKUP & DELIVERY	201,974	203,794	205,614	209,255	211,075
A.3.04.01	WAREHOUSE OPERATIONS	52,030	52,499	52,969	53,908	54,378
A.3.04.01	WAREHOUSE OPERATIONS EQUIP	1,999	1,680	1,695	1,726	1,710
A.3.04.01	DESEG MOVING OPERATIONS	58,435	58,961	59,487	60,540	61,067
A.3.04.01	TRANSPORTATION EQUIPMENT	33,790	34,094	34,399	35,009	35,312
	PURCHASE,WAREHOUSE,ETC. TOTALS	$467,876	$463,690	$467,831	$476,110	$480,251
A.3.05.01	PERSONNEL ADMINISTRATION	$2,965	$1,191	60,607	$1,681	$2,216
	MANAGEMENT SUPPORT TOTALS	$1,409,441	$1,589,698	$1,631,739	1,727,254	$1,744,594

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1993.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
	FACILITIES COMPONENTS					
RESOURCES TO CARRY OUT FIRST 5 YEARS PROGRAM FOR DEFERRED MAINTENANCE, RENOVATION, MODERIZATION & IMPROVEMENTS						
A.4.02	WAREHOUSE & RAW MAT STK	236,208	238,336	222,384	226,320	228,288
A.4.02	ARCHITECT & ENGINEERING	335,984	652,947	856,527	952,187	1,122,864
A.4.02	ADM SUPPORT SVCS ADM	40,381	78,798	90,881	97,008	107,132
A.4.02	CENTRAL DUPLICATING OFFICE	148,671	149,485	150,739	153,407	154,741
A.4.02	PLANT OPER CUST SERVICE	191,979	193,769	195,438	198,898	200,626
A.4.02	MAINT GENERAL ADMIN	20,699	20,886	21,072	21,445	21,632
A.4.02	MAINT OF GRNDS	179,485	201,833	203,635	185,953	187,570
A.4.02	MAINT ALL BLDGS & EQUIP	6,497,829	11,036,368	13,782,102	15,176,033	17,401,997
A.4.02	MAINT SHOPS EQUIPMENT	77,256	77,952	78,645	80,040	80,736
	UPDATE SCHOOLS TOTALS	$7,727,892	$12,650,234	$15,601,343	$17,091,291	$19,505,580
FACILITIES RELATED NEEDS IDENTIFIED IN VARIOUS COMPONENTS WHICH HAVE NOT BEEN PROVIDED FOR ON SECTION 4.02						
A.4.03	ARCHITECT & ENGINEERING-2	97,347	82,656	93,677	66,375	60,900
A.4.03	PLANT OPERATION CUST SVCS-2	51,674	52,139	52,605	53,536	54,002
A.4.03	UTILITIES-ELECTRIC	17,205	17,[illegible]	17,515	17,825	17,980
A.4.03	UTILITIES-WATER	222	[illegible]	226	230	232
A.4.03	UTILITIES-SEWER	167	[illegible]	170	173	174
A.4.03	UTILITIES-TELEPHONE	22,200	22,400	22,600	23,000	23,200
A.4.03	UTILITIES-HEAT	16,650	16,800	16,950	17,250	17,400
A.4.03	MAINT OF GROUNDS-2	1,187	1,198	1,208	1,230	1,240
A.4.03	MAINT OF ALL BLDGS-2	1,944,729	1,803,627	1,400,831	927,530	935,595
	RELATED FACILITIES TOTALS	$2,151,372	$1,996,572	$1,605,782	$1,101,149	$1,110,723
ADDITIONAL FACILITIES NEEDS IN NON-INTEGRATED SCHOOLS WHIC ARE BEYOND THE SCOPE OF WORK IDENTIFIED IN 4.02 & 4.03						
A.4.04	ACHITECTURE & ENGINEERING-4	0.00	0.00	433,920	151,800	0.00
A.4.04	PLANT OPER CUST SVCS-3	0.00	0.00	0.00	63,213	95,154
A.4.04	MAINT BLDGS & EQUIP-3	0.00	0.00	6,198,050	2,156,250	0.00
A.4.04	PROP INVEST & APPRAISALS	0.00	453,600	0.00	0.00	0.00
	FACILITIES RENOVATIONS TOTALS	$0	$453,600	$6,631,970	$2,371,263	$95,154

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY9184-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
	FACILITY COMPONENTS TOTALS	$9,879,264	$15,100,406	$23,839,095	20,563,783	$20,711,465
B. SPECIAL PROVISIONS FOR SCHOOLS WHICH REMAIN NON-INTEGRATED						
B.1.01	DEPUTY SUPT/INSTRUCTION	8,576,095	10,980,833	11,078,877	11,274,963	11,373,006
B.2.01.01	GENERAL INSTRUCTION ELEMENTARY	3,739,878	3,773,571	3,807,263	3,874,649	3,908,341
AFTER SCHOOL PROGRAMS OF REMEDIAL & ENRICHING NATURE						
B.2.01.02	AFTER SCHOOL PROGRAMS-3	268,125	543,073	799,756	812,991	820,061
B.2.01.02	AFTER SCHOOL PROGRAMS	475,505	479,789	484,072	492,640	496,924
	AFTER SCHOOL PROG TOTALS	$743,630	$1,022,862	$1,283,828	$1,305,631	$1,316,985
B.2.01.03	SATURDAY CLASSES L.I.F.T.	299,591	301,234	302,935	306,142	303,741
B.2.01.04	SUMMER SCHOOL PROGRAM-2	330,843	658,197	975,678	992,968	1,001,603
B.2.01.05	SHARED MOTIVATIONAL EXP	136,105	137,331	138,557	141,009	142,235
B.2.01.06	DEPUTY SUPT INSTRUCTION-3	955,062	1,377,423	1,595,544	2,040,775	3,337,612
B.2.01.07	STUDENT ACADEMY CENTERS	998,994	1,704,685	1,588,739	1,511,354	1,538,519
B.2.01.08	LEADERSHIP SKILLS TRAINING	153,377	139,079	96,250	97,954	98,806
B.2.01.09	DEPUTY SUPT/INSTRUCTION	369,669	383,109	365,221	371,685	374,917
B.2.01.10	P.A.S.S. PROGRAM	293,145	299,267	301,939	307,283	309,955
B.2.01.11	PARENTAL INVOLVEMENT	430,551	1,225,915	2,042,639	2,859,431	2,903,359
B.2.01.12	PEER TUTORING	142,002	196,715	201,198	178,122	179,091
B.2.01.14	CURRICULUM DEVELOPMENT	241,020	292,287	291,934	295,598	297,295
	NON-INTEGRATED SCHOOLS TOTALS	$17,161,768	$22,377,960	$23,970,892	25,502,524	$26,995,484

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY. SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

ST. LOUIS PUBLIC SCHOOLS
BUDGET SUMMARY
NEW VOLUNTARY DESEGREGATION PLAN
PROJECTED FIVE YEAR NEEDS
PART A

DESEG PROJ NUMBER	BUDGET FUNCTION DESCRIPTION	FY1983-1984 EST. COST	FY1984-1985 EST. COST	FY1985-1986 EST. COST	FY1986-1987 EST.COST	FY 1987-1988 EST. COST
C. VOLUNTARY PLAN COMPONENTS - MAGNET SCHOOLS AND SUPPORT PROGRAMS						
EXISTING & PROPOSED MAGNET SCHOOLS						
C.S.01	MATH-SCIENCE & TECHNOLOGY	0.00	965,440	4,036,479	4,081,471	4,116,962
C.S.02	ACADEMY OF BASIC INSTRUCTION I	1,469,333	1,491,362	1,504,677	1,531,309	1,544,625
C.S.03	INDIVIDUALLY GUIDED EDUCATION-II	954,741	2,196,652	2,182,204	2,220,327	2,240,139
C.S.04	INVESTIGATIVE LEARNING MIDDLE	1,829,039	1,853,288	1,874,880	1,998,963	1,924,654
C.S.05	FOREIGN LANGUAGE EXPERIENCE HS	283,555	286,109	288,664	293,773	296,328
C.S.06	VISUAL & PERF ARTS MIDDLE I	1,855,249	1,882,983	1,899,796	1,933,420	1,950,233
C.S.07	FOREIGN LANGUAGE EXP SCH II	360,750	1,359,585	1,340,044	1,363,761	1,375,620
C.S.08	INDIVIDUALLY GUIDED ED MIDDLE	639,250	2,960,220	2,955,010	3,007,311	3,021,044
C.S.09	MILITARY ACADEMY MIDDLE	207,570	2,372,973	2,368,170	2,410,985	2,431,012
C.S.10	MONTESSORI II	395,290	1,952,563	1,941,746	1,976,114	1,993,297
C.S.11	NAVAL JR ROTC	1,065,600	6,160,782	6,153,639	6,262,553	6,317,010
C.S.12	VISUAL & PERF ARTS MID-II	113,220	1,905,159	1,899,570	1,933,469	1,950,091
C.S.13	VISUAL & PERF ARTS HS	1,743,900	5,189,820	5,185,156	5,294,627	5,349,363
C.8.01	CURRICULUM DEVELOPMENT	591,459	509,359	679,039	331,978	294,758
C.8.02	ETHNIC HERITAGE	185,015	230,709	275,704	344,353	781,676
C.8.03	RECRUITMENT & COUNSELING	292,125	292,[illegible]	316,980	323,740	326,555
	MAGNET SCHOOL TOTALS	$11,678,216	$32,587,520	$35,960,758	36,186,589	$36,513,277
	ANNUAL TOTALS	$119,010,252	$169,535,649	$188,189,583	$179,011,691	$181,113,970
	FIVE YEAR TOTAL			$836,861,145		

BUDGET PLANNING AND DEVELOPMENT DIVISION
FOR INTERNAL DISCUSSION ONLY, SUBJECT TO VERIFICATION AND RECONCILIATION. REVISED MARCH 24,1983.

QUESTION #3

TOTAL ACTUAL REVENUES OF THE ST. LOUIS PUBLIC SCHOOLS

Source	1977-78	1978-79	1979-80	1981-82	1982-83
Local	$ 60,422,553	$ 62,822,530	$ 68,987,516	$ 66,470,242	$ 67,151,078
County	3,115,585	3,157,507	3,205,319	3,237,881	3,275,765
State	50,414,801	57,123,728	62,899,080	78,554,517	79,944,011
Federal	32,193,639	29,670,480	31,694,985	35,024,064	34,176,913
Total	$146,146,598	$152,774,245	$166,786,900	$183,286,704	$184,547,767

*FD/5 - State Report

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

vs.

The Board of Education of The City of St. Louis, Missouri, et al.,
Defendants.

CITY BOARD'S REPORT PURSUANT TO ORDER [H(2503)83]

Pursuant to paragraph 6(a) of this Court's Order dated July 5, 1983 [H(2503)83] the City Board hereby certifies that it needs $13,480,593.50 to meet its share of the reasonable actual costs of implementing programs pusuant to the Settlement Plan in the 1983-1984 fiscal year. The tax rate necessary to fund the above amount is 86¢ in addition to the present operating levy of $3.48 which has not been reduced as required by paragraph 6(d) of the July 5, 1983 Order or a total operating levy of $4.34 for the 1983-1984 fiscal year.

Pursuant to [H(2503)83], Memorandum at 27, the City Board staff has reviewed, analyzed and set priorities for program implementation within the context of the time available to perform pre-implementation tasks, the complexities of implementation, and the projected space available in schools to accommodate such programs in 1983-84. The above amount is based on that review and analysis. Programs which have not been included for

implementation in 1983-1984 remain under consideration and study for implementation at a later time.

The $13,480,539.50 and 86¢ were calculated in the following manner:

-Total 1983-1984 implementation costs (reduced from $86,340,232.08 estimate in Exhibit 3).	$ 56,457,392.00
-Less costs of implementing programs under paragraphs 5(a) and 5(b) of the July 5, 1983 Order to be paid in full by State.	16,235,461.00
-Amount of implementation costs to be funded fifty percent by City Board and fifty percent by State.	40,221,931.00
-Amount to be funded by City Board.	20,110,965.50
-Less projected additional revenue by operation of paragraph 6(d) of the July 5, 1983 Order.	6,630,372.00
-Balance necessary to fund City Board's share of costs for 1983-84 fiscal year.	13,480,593.50

It is estimated that 1 cent per $100 assessed valuation will yield $157,866.00. Thus $13,480,593.50 ÷ $157,866 = .8539 or 86¢.

A. **THE $16,235,461 AMOUNT INCLUDES:**

1. **Costs of Implementing the Following Magnet Schools and Programs[1] Pursuant to Paragraph 5(a) of the July 5, 1983 Order**

Academy of Basic Instruction (Lyon)
Individually Guided Education (Woerner)
Investigative Learning Center (Mason)
Visual and Performing Arts (Marquette)
Foreign Lanugage (Roosevelt)

2. **Magnet Schools Scheduled for Operation in 1984-85 for Which Building Preparation Costs Must be Received in 1983-84**

Foreign Language Experience School II
Montessori II
Visual and Performing Arts Middle (Replication)
Individually Guided Education Middle School
Military Academy Middle School
Visual and Performing Arts High School - (Relocate to larger facility)
Naval Jr. ROTC (Relocate to larger facility)

3. **Costs of Implementing the Part-time Educational Programs as Identified in Section V of Settlement Plan, as Approved, and in Section B of its Appendix and of Exhibit 2 include costs for the following:**

---

[1] The State elected to provide transportation under the Voluntary Plan to City students attending City Voluntary Plan Magnet schools and programs in 1982-83. Since it is a cost of implementing such magnet schools which it is obligated to pay in full, the State believed it could provide such transportation at less cost. During discussions pursuant to paragraph 11(c) of the July 5, 1983 Order, the State notified the City Board that it will not provide such transportation. Consequently, such costs had to be added to the budgets for such schools and programs in Section III of the Settlement Plan and in Section C of its Appendix and Exhibit 2.

A.5.01 Honors Art
A.5.02 Honors Music
A.6.01 Springboard to Learning
C.1.02
A.6.03 Pairing and Sharing
C.1.02
A.6.04 Partnership Program
C.1.02
C.1.02 City/County Career Education
C.1.02 Middle School Mass Media
C.1.02 Extended Day Program
C.1.02 City/County Consumer Education
B.1.02 Coordinating of Instructional Programs in Non-Integrated Schools[2]
B.2.01 After School Programs of Remedial and Enriching Nature
B.2.02 Saturday Classes
B.2.03 Summer Education Experience
B.2.04 Schools of Emphasis[3]
B.2.05 Parents as Teachers
B.2.06 Peering Tutoring
B.2.07 Motivational/Recognition Experience Program
B.2.08 Role Model Experiences
B.3.01 Parent and Staff Seminars
B.3.02 Student Concerns Committee (no budget request necessary)

---

[2] This component provides for the assignment of instructional coordinators to non-integrated schools to ensure the coordination and articulation of part-time program activities with the instructional programs of the school.

[3] This component allows each non-integrated school to select specialty programs which will be specific to the needs of that school.

B. **THE $40,221,931.00 AMOUNT INCLUDES:**[4]

Costs of Implementing the Following Programs Pursuant to Paragraph 5(c) of the July 5, 1983 Order for 1983-1984 include:

A.1.01 Curriculum Development (Computer Literacy/Program)
A.1.02 Curriculum Supervision
A.2.01 Library/Media Services
A.2.02 Audio Visual Services
A.3.01 Lower Pupil Teacher Ratios
A.3.02 Restore Art, Music and Physical Education
A.3.03 Science Lab Teachers Middle Schools
A.3.04 Services to Handicapped Children
A.3.05 Nurses and Counselors
A.4.04 Full-Time Four Year Alternative High School
A.4.05 Tri-A Outreach
A.5.03 Extra-Curricular Athletic Activities
A.6.02 Science Enrichment Program
A.7.01 More Effective Schools
A.7.02 Staff Development
A.8.02 Security Guards (Elementary)
A.8.03 Security Guards (Secondary)
A.8.05 School-Parent-Community Relations

---

[4] Included in the category of costs to be funded equally by the City Board and the State of Missouri are expenses related to maintenance mechanics work and contracted services to implement the portion of the facilities maintenance schedule as described in Section A of the Settlement Plan Appendix and in Exhibit 2. This work includes maintenance repairs and program related repairs and alterations necessary to meet obligations under the Settlement Plan as approved.

The costs herein do not include capital inprovement expenses. Such costs will be addressed in a Bond Issue Proposal pursuant to paragraph 5(d) of the July 5, 1983 Order. The distinction between capital improvements costs and the costs provided for herein is based upon the Model Building Code of the City of St. Louis and generally accepted appraisal practices related to this subject matter.

A.8.06 Public Affairs
A.8.07 Controller's Office
A.8.10 Insurance Administration - Safety of Buildings
A.8.11 Purchasing, Warehouse, Pickup and Delivery (Board Owned Vehicles)
A.8.13 Desegregation Planning and Monitoring
A.8.15 Long Range Planning

All programs recommended for immediate implementation by the Court's financial advisor will be implemented in 1983-1984 with the exception of the following:

A.4.01 Develop and Implement Early Childhood Education Program

1983-84 had originally been slated as a planning year. While no planning budget has been submitted for 1983-1984, it is intended that planning will proceed with a view toward implementation in 1984-85.

A.4.05 Expanded Opportunities for All-Day Kindergarten

This program was initially slated for full implementation in 1984-85 because of space limitations and the need for program planning. The reduction of pupil-teacher ratios will require the opening of additional classrooms for 1983-84. Planning is scheduled to proceed for implementation in 1984-85. No planning budget is included for 1983-84.

A.4.03 Restore After-School Tutorial Programs

Given the magnitude of efforts required to implement the proposed programs for 1983-84 and the priority assigned to this program, its implementation will remain under consideration for implementation at a later time.

A.4.09 Gateway Summer Institute

Time does not permit the implementation of this program in the summer of 1983.

A.4.10 Student Leadership

This program is currently operational. With respect to its priority, the proposed expansion will remain under consideration for implementation at a later time.

B.1.01 Lower Pupil-Teacher Ratios in Non-Integrated Schools

Classroom space limitations do not permit the reduction of pupil-teacher ratios in non-integrated schools in 1983-84 to a level below the reductions proposed for district-wide implementation A.3.01.

Respectfully submitted,

LASHLY, CARUTHERS, BAER
& HAMEL
A Professional Corporation

By John H. Lashly
Paul B. Rava
Kenneth C. Brostron
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2939

Attorneys for the Board of
Education of the City of
St. Louis, Missouri

Certificate Of Service

I hereby certify that a true copy of the foregoing Report has been mailed this 15th day of July, 1983 by prepaid United States Mail to All Counsel of Record.

Kenneth Brostron

APPENDIX F*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
Eastern Division

Cause No. 72-100-C (4)

CROSS-CLAIM OF THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS

Craton Liddell, a minor, by Minnie Liddell, his mother and next friend, and Minnie Liddell; Joanna Goldsby, a minor, by Barbara Goldsby, her mother and next friend, and Barbara Goldsby; Deborah Yarber, a minor, by Samuel Yarber, her father and next friend, and Samuel Yarber; Nathalie Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore; Rachelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Plaintiffs,

and

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, minors, by Catherine Neel, their natural guardian and next friend, and Catherine Neel; Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend, and Horace Edington; The Concerned Parents for Neighborhood Schools,

Plaintiffs,

---

*Leave to file the pleadings herein was granted in part only; additional parties defendant were limited to St. Louis County certain officers thereof, and certain school districts located therein. See opinions of Court of Appeals, infra.

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis, and the National Association for the Advancement of Colored People,

Plaintiffs,

and

The United States of America,

Plaintiff,

and

The City of St. Louis,

Plaintiff,

v.

The Board of Education of the City of St. Louis,

Defendant and Cross-Claimant,

v.

The State of Missouri; Joseph P. Teasdale, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; James I. Spainhower, Treasurer of the State of Missouri; Stephen C. Bradford, Commissioner of Administration of the State of Missouri; the State of Missouri Board of Education, and its members Grover A. Gamm (President), Irving A. Williamson (Vice-President), Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and Robert Welling; and Arthur Mallory, Commissioner of Education of the State of Missouri,

Defendants and Cross-Defendants,

and

The Affton Board of Education; the Bayless Board of Education; the Brentwood Board of Education; the Clayton Board of Education; the Ferguson-Florissant Board of Education; the Hancock Place Board of Education; the Hazelwood Board of Education; the Jennings Board of Education; the Kirkwood Board of Education; the Ladue Board of Education; the Lindbergh Board of Education; the Maplewood-Richmond Heights Board of Education; the Mehlville Board of Education; the Normandy Board of Education; the Parkway Board of Education; the Pattonville Board of Education; the Ritenour Board of Education; the Riverview Gardens Board of Education; the Rockwood Board of Education; the University City Board of Education; the Valley Park Board of Education; the Webster Groves Board of Education; the Wellston Board of Education; the Board of Education for the Special School District of St. Louis County; the Ft. Zumwalt Board of Education; the St. Charles Co. R-V Board of Education; the Wentzville R-IV Board of Education; the St. Charles Board of Education; the Francis Howell R-III Board of Education; the Dunklin R-V Board of Education; the Hillsboro R-III Board of Education; the Fox C-6 Board of Education; the Festus R-VI Board of Education; the 47 Crystal City Board of Education; the 73 DeSoto Board of Education; the Windsor C-1 Board of Education; the Grandview R-II Board of Education; the (E) Jefferson Co. R-VII Board of Education; the Northwest Jefferson Co. R-I Board of Education; the (E) Sunrise R-IX Board of Education; St. Louis County; St. Charles County; Jefferson County; the Missouri Housing Development Commission; the Housing Authority of St. Louis County; the Land Clearance for Redevelopment Authority of St. Louis County; the Land Clearance for Redevelopment Authority of the City of St. Louis;

Cross-Defendants,

and

Julius Dix, David Mahan, Anne Price, and Rufus Young, Jr. (Area Superintendents); Marjorie M. Weir (President), Donald W. Williams (Vice-President), Marjorie R. Smith (Secretary), Penelope Alcott, Gordon L. Benson, Henry M. Grich, Jr., Nathaniel Johnson, Betty Klinefelter, Lawrence E. Nicholson, Daniel Schesch, Daniel L. Schlafly, Dorothy C. Springer (Members of the Board of Education of the City of St. Louis); and Robert E. Wentz (Superintendent of Schools of the City of St. Louis),

Defendants.

Preliminary Statement

1. This is a cross-claim seeking declaratory and injunctive relief to redress the deprivation under color of state law of the rights, privileges, and immunities secured by the United States Constitution and laws to all school children in the City of St. Louis. The Board of Education of the City of St. Louis ("St. Louis Board") brings this action as cross-claimant in order to fulfill its constitutional obligation to operate a school system free of racial discrimination, and on behalf of its students whose education is its responsibility. This action seeks an end to the vestiges of the racially dual structure of public education established and maintained throughout the St. Louis metropolitan area by the State of Missouri and the other cross-defendants named herein. For purposes of this cross-claim, the "St. Louis metropolitan area" is defined as the City of St. Louis and St. Louis, St. Charles, and Jefferson Counties.

2. As set forth in detail below, the State of Missouri, the other cross-defendants, and their predecessors cooperated for many years in a deliberate and successful effort to create a racially dual structure of public education throughout the St. Louis metropolitan area. Prior to 1954 this racially dual metropolitan-wide structure of public education was based on two sets of laws

requiring racial segregation. First, state law absolutely mandated racial segregation of Missouri schools, and authorized the interdistrict transfer of black students to ensure that all schools were segregated. Those school districts with black residents either operated separate schools for black students or transferred black students to schools for blacks in other school districts in the metropolitan area. Second, by adoption of discriminatory zoning laws, enforcement of racially restrictive covenants, application of discriminatory housing policies, and other governmental actions, cross-defendants fostered residential segregation that confined black citizens to live only in certain school districts and excluded them from others. Through these two sets of laws, cross-defendants created and maintained a racially dual metropolitan-wide structure of public education. State action requiring residential segregation resulted in the total exclusion of blacks from certain school districts. Where blacks were permitted to live in the metropolitan area, state law required that they attend segregated schools and authorized interdistrict transfers to maintain segregation. Transfers took place between districts within counties, between districts in different counties, and between counties and the City of St. Louis. Thus, through a combination of residential segregation, racially segregated schools, and interdistrict transfers, cross-defendants linked all school districts in the metropolitan area and created a single, racially dual, metropolitan-wide structure of public education.

3. Following the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), the State of Missouri and the other cross-defendants continued virtually the same patterns of racial segregation in schools throughout the metropolitan area. Since 1954, the cross-defendants have failed to discharge their constitutional duty to dismantle the dual structure of public education they created in the St. Louis metropolitan area. They have continued to transfer students across district lines, consolidated and reorganized various school districts, blocked the consolidation of other school districts, assigned personnel on a discriminatory basis, and

taken other comparable actions all with the effect and/or purpose of perpetuating and expanding the racially dual structure of public education in the St. Louis metropolitan area. The State of Missouri and other cross-defendants herein have also perpetuated residential segregation that has contributed to the maintenance of segregated schools and frustrated court-ordered desegregation, including desegregation of the St. Louis public school system.

4. As a consequence of these actions, the public school systems in the St. Louis metropolitan area continue to bear the vestiges of the racially dual structure of public education established by cross-defendants prior to 1954. Based on available data, it is estimated that approximately 91 percent of all black faculty in the metropolitan area teach in only five districts — St. Louis, Normandy, University City, Wellston, and are more than 70 percent black, while 25 districts are less than 10 percent black, including 17 districts that have black enrollments of less than 1 percent. Furthermore, approximately 86 percent of all black children in the metropolitan area attend school in five school districts — St. Louis, Normandy, University City, Wellston, and Ferguson-Florissant — that have only 37 percent of the total metropolitan enrollment. Fewer than one percent of all black children in the St. Louis metropolitan area attend school in all St. Charles and Jefferson County districts, and eight virtually all-white districts in St. Louis County. Similarly, faculty hiring and assignments continue to reflect the racial identifiability of St. Louis area school districts. Based on available data, it is estimated that approximately 91 percent of black faculty in the metropolitan area teach in only five districts — St. Louis, Normandy, University City, Wellston, and Ferguson-Florissant. Of the remaining school districts, 34 have faculties that are less than 10 percent black, including 19 that have faculties less than 1 percent black, or no black faculty at all.

5. For the reasons summarily set out above, and detailed below, the St. Louis Board requests that this Court declare the public schools in the St. Louis metropolitan area to be unconstitutionally segregated, and order development and implementation of a desegregation plan for the St. Louis metropolitan area that will eliminate the vestiges of the racially dual metropolitan-wide structure of public education established by cross-defendants prior to 1954 and continued to the present.

Jurisdiction

6. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. §§ 1331(a), 1343(3) and (4), 2201, and 2202. This cause of action arises under 42 U.S.C. §§ 1981-83, 1988, and 2000d, and the Fourteenth Amendment to the Constitution of the United States.

Parties

7. Cross-claimant Board of Education of the City of St. Louis is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in the City of St. Louis.

8. Cross-defendant State of Missouri has ultimate responsibility for the education of children in that state.

9. Cross-defendants Joseph P. Teasdale, John Ashcroft, James I. Spainhower, and Stephen C. Bradford are sued in their respective official capacities as Governor, Attorney General, Treasurer, and Commissioner of Administration of the State of Missouri.

10. Cross-defendant Missouri State Board of Education, a body corporate organized under the laws of the State of Missouri, is charged with the general power and responsibility for supervising instruction in the public schools of Missouri. R.S. Mo. 1978, § 161.092. The Missouri State Board of Educa-

tion also is the successor in interest and responsibility to the previously existing St. Louis County Board of Education, St. Charles County Board of Education, and Jefferson County Board of Education. These county boards of education were established by the State in 1948 for the purpose of consolidating and reorganizing school districts. Senate Bill No. 307 (May 21, 1948). They were abolished in 1979. Mo. Laws 1979, § 1, p. 458 (August 1, 1979). Cross-defendants Grover A. Gamm, Irving A. Williamson, Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and Robert Welling are sued in their official capacity as members of the State Board of Education.

11. Cross-defendant Arthur Mallory, Commissioner of Education of the State of Missouri, is sued in his official capacity as the chief administrative officer of the Missouri State Board of Education. R.S. Mo. 1978, § 161.112.

12. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within St. Louis County:

a. Affton Board of Education;

b. Bayless Board of Education;

c. Brentwood Board of Education;

d. Clayton Board of Education;

e. Ferguson-Florissant Board of Education. This cross-defendant is also sued as the successor to the Boards of Education of the former Berkeley, Scudder, and Kinloch School Districts. Scudder was annexed by Berkeley in 1960, and Berkeley and Kinloch were consolidated with Ferguson-Florissant in 1976;

f. Hancock Place Board of Education;

g. Hazelwood Board of Education;

h. Jennings Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former West Walnut Manor School District, which was annexed by Jennings in 1960;

i. Kirkwood Board of Education;

j. Ladue Board of Education;

k. Lindbergh Board of Education;

l. Maplewood-Richmond Heights Board of Education;

m. Mehlville Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former Jefferson Barracks School District, which was annexed by Mehlville in 1964;

n. Normandy Board of Education;

o. Parkway Board of Education;

p. Pattonville Board of Education. This cross-defendant is also sued as the successor to the Board of Education of the former Maryland Heights School District, which was annexed by Pattonville in 1962;

q. Ritenour Board of Education;

r. Riverview Gardens Board of Education;

s. Rockwood Board of Education;

t. University City Board of Education;

u. Valley Park Board of Education;

v. Webster Groves Board of Education; and

w. Wellston Board of Education.

13. Cross-defendant Special School District of St. Louis County is an educational instrumentality of the State of Missouri organized in 1957, with jurisdictional boundaries coterminous with St. Louis County, to provide educational opportunities to the County's handicapped children. In 1965 the cross-defendant State Board of Education designated the Special District also to provide vocational and technical educational programs for the entire County.

14. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within St. Charles County:

a. Ft. Zumwalt Board of Education;

b. St. Charles Co. R-V Board of Education;

c. Wentzville R-IV Board of Education;

d. St. Charles Board of Education; and

e. Francis Howell R-III Board of Education.

Each of the foregoing cross-defendants also is sued as the successor to any previously existing boards of education with which it has been reorganized or consolidated, or which it has annexed.

15. Each of the following cross-defendants is a body corporate organized under the laws of the State of Missouri, with certain authority delegated from the State to supervise the instruction of pupils in its respective jurisdiction within Jefferson County:

a. Dunklin R-V Board of Education;

b. Hillsboro R-III Board of Education;

c. Fox C-6 Board of Education;

d. Festus R-VI Board of Education;

e. 47 Crystal City Board of Education;

f. 73 DeSoto Board of Education;

g. Windsor C-1 Board of Education;

h. Grandview R-II Board of Education;

i. (E) Jefferson Co. R-VII Board of Education;

j. Northwest Jefferson Co. R-1 Board of Education; and

k. (E) Sunrise R-IX Board of Education.

Each of the foregoing cross-defendants also is sued as the successor to any previously existing boards of education with which it has been reorganized or consolidated, or which it has annexed.

16. Cross-defendant St. Louis County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

17. Cross-defendant St. Charles County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

18. Cross defendant Jefferson County is a legal subdivision of the State of Missouri. Missouri Constitution, Article VI, Section 1.

19. Cross-defendant the Missouri Housing Development Commission is a body corporate organized under the laws of the State of Missouri to assist in the development and financing of low- and moderate-income housing. R.S. Mo. 1978, § 215.030.

20. Cross-defendant the Housing Authority of St. Louis County is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing, replanning, and reconstructing areas in which unsafe housing conditions exist, and of providing safe and sanitary dwelling accommodations for persons of low income. R.S. Mo. 1978, § 99.030.

21. Cross-defendant the Land Clearance for Redevelopment Authority of St. Louis County is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist. R.S. Mo. 1978, § 99.420.

22. Cross-defendant the Land Clearance for Redevelopment Authority of the City of St. Louis is a municipal corporation organized under the laws of the State of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist. R.S. Mo. 1978, § 99.330.

23. All of the foregoing cross-defendants are jointly and severally liable for the creation, maintenance, and perpetuation of the racially dual structure of public education in the St. Louis metropolitan area.

(a) Under Missouri law, the State of Missouri, its Governor, Attorney General, Treasurer, and Commissioner of Administration, its Board of Education and members, and it Commissioner of Education (¶¶ 8-11) (referred to throughout this cross-claim as the "State Education Cross-Defendants") have ultimate responsibility for public education in the State of Missouri, and for ensuring that local school districts are operated in conformity with the Fourteenth Amendment to the Constitution of the United States and federal laws requiring nondiscrimination in public education. The State Education Cross-Defendants also are responsible for providing financial support to local school districts and for establishing policy with respect to curriculum, teacher qualifications, and other related matters. The State Education Cross-Defendants are liable because they or their predecessors enacted and enforced constitutional and statutory provisions that created the racially dual structure of public education in the St. Louis metropolitan area, and because since 1954 they have failed to fulfill their constitutional obligation to take affirmative steps to dismantle the vestiges of that racially dual structure. They are also liable because they are responsible for the unconstitutional actions of their agents, the School District Cross-Defendants (*see* ¶ 23(b) below).

(b) Under Missouri law, the Boards of Education of the school districts in St. Louis, St. Charles, and Jefferson Counties, and the Special School District of St. Louis County, (¶¶ 12-15) (referred to throughout this cross-claim as the "School District Cross-Defendants") are agents of the State with certain delegated authority to supervise the instruction of students in their respective jurisdictions. The

School District Cross-Defendants are liable because they participated in the creation of an unconstitutional racially dual metropolitan-wide structure of public education through the commission of interdistrict constitutional violations with interdistrict effects. The School District Cross-Defendants also are joined in this action because each of them was affected by the constitutional violations of the State Education Cross-Defendants, the Housing and Local Government Cross-Defendants (*see* ¶ 23(c) below), and other School District Cross-Defendants, and participation of some or all of these districts will be necessary to provide a full and adequate constitutional remedy.

(c) Under Missouri law, the State of Missouri (¶ 8); its Governor, Attorney General, Treasurer and Commissioner of Administration (¶ 9); and the cross-defendants set forth in ¶¶ 16-22, and their predecessors (referred to throughout this cross-claim as the "Housing and Local Government Cross-Defendants") were and are responsible for the development, planning, site selection, zoning, issuance of permits, and/or management of public and private housing in the St. Louis metropolitan area. The Housing and Local Government Cross-Defendants are liable because they participated in the development and perpetuation of metropolitan-wide residential segregation. This residential segregation has been a key factor in creating and perpetuating the racially dual structure of public education and in frustrating court-ordered desegregation in St. Louis and elsewhere in the metropolitan area. The Housing and Local Government Cross-Defendants also are joined in this action because each of them was affected by the constitutional violations of the State Education Cross-Defendants, the School District Cross-Defendants, and other Housing and Local Government Cross-Defendants, and participation of some or all of these cross-defendants will be necessary to provide a full and adequate constitutional remedy.

The Establishment of the Racially Dual Metropolitan-Wide Structure of Public Education Prior to 1954

24. Prior to 1865, the State of Missouri prohibited the public education of black children. Act of February 16, 1847, § 1, 1847 Missouri Laws 103. In 1865 the Missouri Constitution was amended to allow for "separate schools . . . for children of African descent." Missouri Constitution, Article IX, § 2 (1865). From 1865 to 1954, or for almost 90 years, the State Education and School District Cross-Defendants, or their predecessors, operated a racially segregated structure of public education under color of state law. Black children were segregated by law from white children in the elementary and secondary schools of Missouri and denied the opportunity for an equal education. R.S. Mo. 1865, § 20, p. 262. In 1945 the State of Missouri elevated this longstanding statutory requirement of segregated education to a state constitutional command. Missouri Constitution, Article IX, Section 1(a)(1945). Missouri statutes implementing the constitutional mandate of segregated schools were not repealed until 1957, and the Missouri Constitution's requirement of segregated schools was not actually repealed by the State of Missouri until 1976.

25. In order to enforce its laws requiring segregated education, the State of Missouri enacted a series of statutes requiring, permitting, and supporting the transfer of black children from school districts without black schools to districts with schools for blacks. In 1917, for example, the State of Missouri enacted legislation creating a "Colored Consolidated High School District" in St. Louis County and expressly providing for the interdistrict transfer of "colored children." Act of April 9, 1917, § 11256, 1917 Missouri Laws 498 (repealed 1957). Similarly, in 1921 the state enacted new legislation authorizing county boards of education to pay the tuition costs of black students transferred to black schools in different school districts. Act of March 28, 1921, § 21, 1921 Mo. Laws 626.

26. Prior to 1954 the State Education and School District Cross-Defendants, or their predecessors, acting individually and in conjunction with one another, established a system of racial segregation between and among school districts in the St. Louis metropolitan area. In order to implement this racially dual metropolitan-wide structure of public education, the School District Cross-Defendants explicitly or tacitly agreed among themselves and with the State Education Cross-Defendants to provide black schools only in certain school districts. Other school districts with schools only for whites were required to, and did, transfer their black students across district, county, and city lines to districts with schools for blacks. This racially dual structure of public education was established and operated under color of state law and was implemented on a metropolitan-wide basis.

27. Cross-defendants failed to establish black elementary schools and high schools in all school districts in St. Louis, St. Charles, and Jefferson Counties, or established such schools long after the creation of schools for whites. For example, no black high school operated in St. Louis County until 1928, in St. Charles County until 1932, or in Jefferson County until 1939. Prior to the establishment of black schools in their local district, black children — regardless of the school district in which they lived — were transferred to black schools in the City of St. Louis, other counties, or other districts within their own county; lived with relatives in districts with black schools; or were discouraged from attending public school at all.

28. By 1954, at least 26 of the school districts in the three counties included in the St. Louis metropolitan area had black school-age children residing within their geographical limits. However, only four — Kinloch and Webster Groves in St. Louis County, Festus in Jefferson County, and St. Charles in St. Charles County — operated high schools for blacks. The districts with black school-age students but no high schools for blacks included: Ferguson-Florissant, Riverview Gardens,

Berkeley, Pattonville, Scudder, Maryland Heights, Ritenour, Normandy, Wellston, Clayton, Brentwood, Maplewood-Richmond Heights, Rockwood, Valley Park, Kirkwood, Parkway, and Ladue in St. Louis County; Herculaneum, Crystal City, and DeSoto in Jefferson County; and Augusta and Wentzville in St. Charles County. Moreover, six of the 26 school districts with black school-age children did not even have elementary schools for blacks: Berkeley, Pattonville, Normandy, Valley Park, and Ladue in St. Louis County; and Augusta in St. Charles County. School districts with black school-age children, but no black high schools and/or elementary schools, regularly engaged in interdistrict transfers to maintain the metropolitan-wide structure of racially dual schools.

29. The State Education and School District Cross-Defendants supported, supervised, and funded the pre-1954 interdistrict student transfers in the St. Louis metropolitan area that have been described in paragraphs 25 to 28. State funds were used to create segregated schools and to keep them segregated. The State of Missouri and its officials and agents provided funds and educational services on a segregated basis and in a manner that disadvantaged black students, faculty, and schools in the St. Louis metropolitan area. Black schools were maintained at an inferior level of quality.

30. Prior to 1954 the State Education and School District Cross-Defendants also caused the faculties of the schools in the St. Louis metropolitan area to be segregated so that black schools had only black faculty and white schools had only white faculty.

31. Prior to 1954, the Housing and Local Government Cross-Defendants, or their predecessors, helped to create and perpetuate the racially dual metropolitan-wide structure of public education by requiring and encouraging racial segregation in residential housing throughout the metropolitan area through the following actions, among others:

(a) In 1916 the City of St. Louis adopted a zoning ordinance requiring mandatory residential segregation. Although this ordinance was overturned in the courts, the City nevertheless reenacted the same law. These statutes fostered a pattern of residential segregation that has continued to the present.

(b) Prior to 1949, the courts of the State of Missouri enforced restrictive covenants forbidding the sale of property to blacks, and state officials continued to record such covenants thereafter. Racially restrictive covenants were recorded and enforced in the City of St. Louis and each and every school district in St. Louis, St. Charles, and Jefferson Counties. This practice reinforced residential segregation already in place and further contributed to the segregation of schools throughout the St. Louis metropolitan area.

(c) Prior to 1954, all conventional public housing for black residents in the St. Louis metropolitan area was built in the black neighborhoods of the City of St. Louis and was occupied exclusively by black families. Conversely, all public housing for white residents was built in white neighborhoods in the metropolitan area and occupied exclusively by whites.

32. The actions described in paragraph 31 fostered widespread residential segregation in the St. Louis metropolitan area and supported and maintained the segregated structure of public education prior to 1954. Together these actions and policies operated to confine black school-aged residents to certain school districts and exclude them entirely from others. Those districts which had no black students at all did not need to transfer black students to other school districts, and simply operated schools exclusively for whites. School districts with black residents maintained segregated schools through the metropolitan-wide system of interdistrict transfers described in paragraphs 25-29.

33. Other forms of racial discrimination by the State of Missouri, the Housing and Local Government Cross-Defendants, and other governmental bodies fostered and supported the racially dual structure of public education in the St. Louis metropolitan area prior to 1954. These practices included discrimination in public and private employment; discriminatory annexations and deannexations; segregation of public facilities and accommodations; and discriminatory police activities. These actions had the purpose and effect of confining blacks to prescribed residential communities and facilitating the complete segregation of public schools in the metropolitan area.

Failure to Disestablish the Racially Dual Metropolitan-Wide Structure of Public Education After 1954

34. Since 1954, the cross-defendants have failed to fulfill their constitutional duty to disestablish the racially dual metropolitan-wide structure of public education. Cross-defendants' failure to fulfill their constitutional duty is evidenced by affirmative conduct having the effect and/or undertaken with the purpose of continuing the racially dual metropolitan-wide structure of public education. It is also evidenced by the failure to take other actions that would have encouraged and promoted desegregation. For example, cross-defendants continued the segregative transfer of students while failing to permit transfers that would have a desegregative effect (¶ 35, *infra*); failed to implement and blocked school district consolidations that would have had a desegregative effect while implementing others that reinforced pre-1954 segregated conditions (¶ 36, *infra*); committed intradistrict constitutional violations with interdistrict effects (¶ 37, *infra*); operated a racially dual structure of special and vocational education (¶ 38, *infra*); and maintained, reinforced, and expanded residential segregation in the St. Louis metropolitan area (¶¶ 39-40, *infra*).

35. Notwithstanding the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* the State Education and School District Cross-Defendants failed to end interdistrict transfers with segregative effects, refused to permit interdistrict transfers that would have desegregative effects, and have failed generally to discharge their duty to eliminate all vestiges of segregated schools. These actions have included, among others, the following:

(a) The interdistrict transfers that implemented the racially dual metropolitan structure of education prior to 1954 continued after the Supreme Court's decision in *Brown* v. *Board of Education.* Instead of immediately and effectively desegregating their public schools, the State Education and School District Cross-Defendants continued to transfer black students from school districts with schools exclusively for whites to school districts with schools for blacks. Likewise, these cross-defendants supported, reinforced, and refused to prevent the efforts of white parents to avoid desegregation by transferring their children to school districts that continued to maintain schools exclusively for whites. Although these transfers declined after 1954, they continued at a level sufficient to impede the dismantling of the racially dual structure of public education that cross-defendants had established in the St. Louis metropolitan area.

(b) The State Education and School District Cross-Defendants consistently have refused to enter into cooperative arrangements designed to promote, or otherwise to authorize or encourage, student transfers to alleviate segregated conditions in the St. Louis metropolitan area generally and in the schools of the City of St. Louis in particular. For example, in April 1967 the St. Louis Board wrote to each of the eight St. Louis County school districts which bordered the City of St. Louis to the north and west and suggested that the city and county

districts cooperate in an effort to ameliorate racial imbalances existing in the various school districts. The St. Louis Board also suggested a teacher exchange program to help reduce the racial imbalances in the faculties of the various school districts. None of the eight county school districts responded favorably to the St. Louis Board's request, and no transfers of any kind were initiated. In subsequent years the St. Louis Board renewed its attempts to encourage voluntary exchanges, but county school districts continued to refuse to cooperate.

(c) The St. Louis Board made similar efforts to encourage interdistrict transfers to promote desegregation pursuant to paragraph 12(a) of this Court's order dated May 21, 1980. Letters were sent; meetings were held; and the chairman of the court-appointed Desegregation Monitoring and Advisory Committee was assigned to encourage interdistrict transfers to relieve segregated conditions. However, very few districts agreed to cooperate, and no concrete results were forthcoming. Similarly, the State Education Cross-Defendants failed to develop an effective plan to encourage transfers, and no significant interdistrict desegregation has been achieved.

(d) The Missouri state legislature has rejected legislation designed to facilitate voluntary desegregation of the St. Louis metropolitan area schools. During each of the last two legislative sessions, a bill has been introduced that would have provided fiscal incentives to encourage the voluntary transfer of students between schools to promote racial integration in education. S. 487, 1st Sess., 88th Gen. Ass., State of Mo. However, these bills were never enacted. Most recently the State Education Cross-Defendants even withdrew a proposal for a fiscal incentive bill from their final proposed plan for voluntary interdistrict student exchanges under ¶ 12(a) of this Court's Order of May 21, 1980. The failure of the State to enact

such legislation has had the effect and/or purpose of maintaining segregated conditions in the St. Louis metropolitan area.

36. State Education and School District Cross-Defendants have blocked consideration of, or rejected, school district consolidations and reorganizations that would have had desegregative effects, while implementing others that have reinforced segregated conditions in the St. Louis metropolitan area schools. These actions have included, among others, the following:

(a) In 1967, the Missouri state legislature established the Missouri School District Reorganizaiton Commission, chaired by state representative James I. Spainhower, and charged with developing a master plan for school district reorganization throughout the State. The Commission established several criteria to guide its work, including a provision that "whenever possible, each district should include a population of varied economic, racial, and ethnic characteristics." On April 19, 1968, the Commission held a hearing at which the St. Louis Board submitted a "proposal for school district reorganization of the greater St. Louis area." The "proposal" in part recommended the abolition of all school district boundaries in the City and in St. Louis County, as well as the appointment by the Governor of a metropolitan St. Louis Board of Education with power "to create and draw boundaries for approximately 10 local school districts, similar in enrollment, including both elementary and secondary schools, in such a manner as to realize maximum operational efficiency, equality of educational opportunity, and racial, ethnic and economic heterogeneitv."

In November 1968, the Spainhower Commission recommended the division of the State into 20 regional school districts composed of 132 local school districts. The St. Louis metropolitan area regional school district would

As an alternative, the Adams group urges us to adopt a 12(b) plan which would simply merge both vocational systems by ordering the state to designate the city board as the "area vocational school" (AVS) for the city and to designate the SSD as the AVS both for city and county.[19] It is argued that a single vocational system under one vocational district could best desegregate the vocational programs currently being separately operated by the SSD and city board.[20] We note that in so arguing, Adams ignores the fact that a complete merger of the SSD and city board's vocational systems could be ordered under the

---

O'Fallon's new tenth grade Occupational Orientation magnet program for city students. *Year Four* (1984-1985) — (1) 75% white and 25% black in Special District Technical schools; and (2) 65% white and 35% black at O'Fallon. *Year Five* (1985-1986) — The 12(b) plan's ultimate goal is to have a racial balance of 65% white and 35% black (allowing a ten percentage point diferential either way) at each of the four technical schools in existence then — North County Technical, South County Technical, West County Technical and O'Fallon Technical. The plan also provides that it is certainly permissible to attain the ultimate 65%/35% goal earlier than is contemplated in the initial five-year period.

Other provisions of the plan, such as the establishment of at least seven community-based vocational programs by Year Four (1984-1985) do not have specific racial distribution goals.

[19]The term "area vocational school" (AVS) is a term of art because the Missouri State Board of Education is authorized to "designate" area vocational schools. Such designation makes the AVS eligible for significant additional financial support to serve vocational needs. Vocational education training in Missouri is delivered at comprehensive high schools, junior colleges and area vocational schools; an AVS is defined as that part of a school district which has been designated by the State Board of Education to provide vocational education for its students and students from other specified school districts.

[20]The Adams group also argues that costs and attorneys' fees should be assessed against the parties which submitted the 12(b) plan adopted by the district court. We reject this contention.

(d) In addition to rejecting specific consolidation proposals as set forth above, the State of Missouri has used its laws to make desegregative consolidations and reorganizations more difficult to implement. For example, the State has maintained the City of St. Louis as a "metropolitan school district" with the effect and/or purpose of preventing the St. Louis Board from consolidating St. Louis schools with those in adjoining metropolitan counties. *See* R.S. Mo. 1965, § 162.571. Similarly, in 1967 the State of Missouri imposed a complete moratorium on all pending school district consolidation proceedings, including those underway in St. Louis County. The State did not lift this moratorium until 1977, and even then it imposed significant restrictions intended to make consolidations and reorganizations much more difficult than they had been previously. R.S. Mo. 1978, § 162.222. These barriers were enacted with the effect and/or purpose of preventing consolidations and annexations that would have removed the vestiges of the dual structure of public education in the St. Louis metropolitan area.

(e) While blocking consideration of, or rejecting, consolidations and reorganizations that would have had desegregative effects, State Education and School District Cross-Defendants approved many reorganizations, consolidations, and boundary changes. However, few if any had desegregative effects, and many increased and reinforced segregated conditions within the St. Louis metropolitan area.

37. The School District Cross-Defendants reinforced, maintained, and continued the segregated conditions in the St. Louis metropolitan area schools through a series of intradistrict constitutional violations with interdistrict effects. These actions included, among others, the following: the maintenance of racially identifiable schools; discriminatory construction of temporary and permanent school facilities; discriminatory school

closings; gerrymandering of attendance areas and feeder patterns; discriminatory optional attendance zones and noncontiguous attendance area; discriminatory pupil transportation; discriminatory faculty and administrative hirings and assignments; discriminatory allocation of resources; in-school segregation and discriminatory discipline; discriminatory assignment of minority children to the St. Louis County Special School District; and school district opposition to zoning changes and other proposals that would have permitted the construction of low- and moderate-income housing. The School District Cross-Defendants committed these acts with the effect and/or purpose of maintaining segregation within their own school districts, within the City of St. Louis, and throughout the St. Louis metropolitan area.

38. State Education Cross-Defendants operated a Special School District in St. Louis County with the effect and/or purpose of maintaining segregated schools within the St. Louis metropolitan area. The separate vocational and special educational programs operated by the St. Louis County Special School District are vestiges of the racially dual structure of public education in the St. Louis metropolitan area. Nevertheless, the State Education Cross-Defendants, with segregative effect and/or purpose, have refused to merge this Special School District with the vocational and special education programs of the St. Louis Board. Their continued refusal is demonstrated by their report to this Court on December 15, 1980, under ¶ 12(b) of the Court's Order dated May 21, 1980.

39. Since 1954 the Housing and Local Government Cross-Defendants have continued to employ segregative housing practices that have had the effect and/or purpose of restricting blacks to certain residential communities in the metropolitan area. Such segregative practices have perpetuated the existence of the racially dual structure of public education and have helped frustrate efforts at school desegregation in the St. Louis metropolitan area, including efforts of the St. Louis Board of

Education to implement this Court's order dated May 21, 1980. These acts have included, among others, the following:

(a) The Housing and Local Government Cross-Defendants have pursued segregative public housing practices with the effect and/or purpose of restricting blacks to the City of St. Louis and certain prescribed residential communities in the metropolitan area. Virtually all new conventional public housing projects built in the metropolitan area since 1954 (other than those constructed for elderly persons) have been built in, or on the fringe of, black residential communities and occupied almost exclusively by blacks. Similarly, the Housing and Local Government Cross-Defendants have caused virtually all subsidized housing under the Sections 221(d)(3), 235, and 236, and Section 8 programs to be made available on a segregated basis; blacks have occupied subsidized housing in black areas, and whites have occupied such housing in white areas. These and similar housing practices were approved or supported by the appropriate housing agencies of the State of Missouri and St. Louis County. Such practices have intensified and not ameliorated the effects of pre-1954 school segregation in the metropolitan area.

(b) The Housing and Local Government Cross-Defendants have pursued urban renewal practices with the effect and/or purpose of restricting blacks to the City of St. Louis and certain prescribed residential communities in the metropolitan area. Under the direction of these cross-defendants, public officials have demolished a disproportionate number of dwellings in black and sometimes integrated communities without making appropriate housing available for displaced families. As a result, they have dislocated a disproportionate number of blacks into predominantly black neighborhoods. These practices have perpetuated the vestiges of the dual structure of education in the metropolitan area.

(c) The Housing and Local Government Cross-Defendants also have failed to take actions and follow policies that would have promoted integrated residential opportunities. For example, cross-defendants have not used subsidized housing to promote integration or rezoned land areas to encourage development of low-income and multi-family housing. Such omissions have perpetuated residential segregation and prevented the desegregation of public schools in the St. Louis metropolitan area.

(d) The Housing and Local Government Cross-Defendants have failed to fulfill their constitutional and statutory duty to enforce laws and regulations prohibiting discrimination in housing. For example, they have failed to enforce fair housing laws; failed to prohibit discrimination by licensed real estate agents and brokers; and failed to prohibit "redlining" and other discriminatory practices by regulated lending and banking institutions. Such omissions have perpetuated residential segregation and prevented the desegregation of public schools in the St. Louis metropolitan area.

40. The Housing and Local Government Cross-Defendants and other governmental bodies, have fostered other forms of racial discrimination that have supported the racially dual structure of public education in the St. Louis metropolitan area since 1954. These discriminatory practices have included: discrimination in public and private employment; discriminatory annexations and deannexations; discriminatory siting of public works projects such as highways; and discriminatory police activities. These actions have had the effect and/or purpose of restricting blacks to prescribed residential communities in the metropolitan area. They have helped to maintain segregated schools, caused resegregation of other schools, and frustrated efforts at desegregation. At the same time, the State's maintenance of a racially dual metropolitan-wide structure of public education contributed to residential segregation by identifying certain geographic areas as black and others as white.

Need for Relief

41. As a result of the acts complained of above in paragraphs 34 to 40, the segregated conditions that existed in the St. Louis metropolitan area schools in 1954 persist today. Segregation continues both between school districts, and among schools within various school districts, in the St. Louis metropolitan area. Notwithstanding this Court's order dated May 21, 1980, and the St. Louis Board's efforts to comply with that Order, a large majority of the black students in the public schools of the City of St. Louis still attend 62 all-black or predominantly-black schools. Similarly, as demonstrated by the statistics in paragraph 4 above, school districts in the St. Louis metropolitan area continue to be racially identifiable with reference to both pupil enrollments and faculty assignments.

42. Unless enjoined by order of this Court, cross-defendants will continue to fail to eliminate the vestiges of the unconstitutional racially dual structure of education in the St. Louis metropolitan area. No adequate remedy is available at law.

43. Cross-claimant the St. Louis Board cannot meet its constitutional duty to eliminate the effects of past segregation of the students of the City of St. Louis without remedying the effects of the racially dual metropolitan-wide structure of public education — of which the City of St. Louis is an integral part — created and maintained by cross-defendants.

44. The cross-defendants identified herein must participate in this Court's desegregation order to ensure a complete and constitutional remedy that will eradicate the vestiges of Missouri's racially dual structure of public education and a century and a half of racial discrimination in the St. Louis metropolitan area.

Prayer for Relief

WHEREFORE, cross-claimant the Board of Education of the City of St. Louis respectfully requests that this Court:

(a) enter an order pursuant to 28 U.S.C. § 2201 declaring that cross-defendants and their predecessors created, maintained, and continue to perpetuate a racially dual structure of public education throughout the St. Louis metropolitan area in violation of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §§ 1981-83 and 2000d;

(b) enter an order requiring the cross-defendants identified herein, their successors in office, agents, employees, and all persons in active concert or participation with them, to cease their illegal and unconstitutional conduct and to develop and implement a plan to correct the constitutional violations referred to above. Such a plan should eliminate, to the maximum extent practicable, the remaining vestiges of the racially dual structure of public education in the St. Louis metropolitan area, without regard to school district boundaries and within a constitutionally acceptable period of time. The plan should encompass the City of St. Louis and the Counties of St. Louis, St. Charles, and Jefferson, and should include all school districts that the Court determines to be necessary for an effective, complete, practicable, and stable remedy. The plan should include the reorganization and consolidation of school districts; the establishment of magnet schools; the nondiscriminatory transportation of pupils; the desegregation of faculty and staff; procedures for nondiscrimination in classroom and program assignments, and in discipline; compensatory programs to overcome the effects of past discrimination; and such other provisions and programs as are needed to eliminate the remaining vestiges of segregation in the school districts and schools in the St. Louis metropolitan area. Finally, the plan should be designed and administered in a manner that shall be fair, equitable, and racially nondiscriminatory to all of the students and citizens in the St. Louis metropolitan area;

(c) enter an order pursuant to 42 U.S.C. § 1988 allowing cross-claimant its costs and reasonable attorneys' fees in prosecuting this cross-claim; and

(d) grant such other relief as the Court finds just and proper.

LASHLY, CARUTHERS, THIES,
RAVA & HAMEL
A Professional Corporation

/s/ John H. Lashly

/s/ Paul B. Rava

/s/ Kenneth C. Brostron

714 Locust Street
St. Louis, Missouri 63101
(314) 621-2939

HOGAN & HARTSON

/s/ Robert H. Kapp

/s/ David S. Tatel

/s/ Allen R. Snyder

815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500

Attorneys for the Board of
Education of the City of St. Louis

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
Eastern Division

Cause No. 72-100-C (C)

CALDWELL PLAINTIFFS-INTERVENORS' AMENDED, SUPPLEMENTAL AND CROSS COMPLAINT FOR INTERDISTRICT DESEGREGATION

Craton Liddell, a minor, by Minnie Liddell, his mother and next friend, and Minnie Liddell; Joanna Goldsby, a minor, by Barbara Goldsby, her mother and next friend, and Barbara Goldsby; Deborah Yarber, a minor, by Samuel Yarber, her father and next friend, and Samuel Yarber; Nathaniel Moore, a minor, by Louise Moore, her mother and next friend, and Louise Moore; Rachelle LeGrand, a minor, by Lois LeGrand, her mother and next friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Plaintiffs,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis, and the National Association for the Advancement of Colored People and its City of St. Louis Branch,

Plaintiffs-Intervenors,

and

Janice Adams and Jack Adams, Jr., minors, by Jerrianne Adams, their natural guardian and next friend, and Jerrianne Adams; Catherine M. Neel, their natural guardian and next

friend, and Catherine Neel (sic); Mary Edington and Susan Edington, minors, by Horace Edington, their natural guardian and next friend and Horace Edington; The Concerned Parents for Neighborhood Schools,

Plaintiffs-Intervenors,

and

The United States of America,

Plaintiff-Intervenor,

and

The City of St. Louis,

Plaintiff-Intervenor and Cross-Defendant,

v.

The Board of Education of the City of St. Louis,

Defendant and Cross-Claimant,

v.

The State of Missouri; The State of Missouri Board of Education; and Arthur Mallory, Commissioner of Education of the State of Missouri,

Added Defendants
[by order of 13 July 1977],

and

Joseph P. Teasdale, Governor of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; James I. Spainhower, Treasurer of the State of Missouri; and Grover A. Gamm, Irving A. Williamson, Delmar A. Cobble, Jimmy Robertson, Dale M. Thompson, Donald W. Shelton, and

Robert Welling, members of the State Board of Education, and Stephen C. Bradford, Commissioner of Administration of the State of Missouri,

Added Defendants
[by order of 27 June 1980]

and

Special School District of St. Louis County,

Added Defendant
[by order of 12 September 1980],

and

The Affton Board of Education; the Bayless Board of Education; the Brentwood Board of Education; the Clayton Board of Education; the Ferguson-Florissant Board of Education; the Hancock Place Board of Education; the Hazelwood Board of Education; the Jennings Board of Education; the Kirkwood Board of Education; the Ladue Board of Education; the Lindbergh Board of Education; the Maplewood-Richmond Heights Board of Education; the Mehlville Board of Education; the Normandy Board of Education; the Parkway Board of Education; the Pattonville Board of Education; the Ritenour Board of Education; the Riverview Gardens Board of Education; the Rockwood Board of Education; the University City Board of Education; the Valley Park Board of Education; the Webster Groves Board of Education; the Wellston Board of Education; the Ft. Zumwalt Board of Education; the St. Charles Co. R-V Board of Education; the Wentzville R-IV Board of Education; the St. Charles Board of Education; the Francis Howell R-III Board of Education; the Dunklin R-V Board of Education; the Hillsboro R-III Board of Education; the Fox C-6 Board of Education; the Festus R-VI Board of Education; the 47 Crystal City Board of Education; the 73 DeSoto Board of Education; the Windsor C-1 Board of Education; the Grand-

view R-II Board of Education; the (E) Jefferson Co. R-VII Board of Education; the Northwest Jefferson Co. R-I Board of Education; the (E) Sunrise R-IX Board of Education; St. Louis County; St. Charles County; Jefferson County; the Missouri Housing Development Commission; the Housing Authority of St. Louis County; the Housing Authority of the City of St. Louis; the Land Clearance for Redevelopment Authority of the City of St. Louis; the Land Clearance for Redevelopment Authority of St. Louis County,

Newly-Added Defendants,

and

Julius Dix, David Mahan, Anne Price, and Rufus Young, Jr. (Area Superintendents); Marjorie M. Weir (President), Donald W. Williams (Vice-President), Marjorie R. Smith Benson, Henry M. Erich, Jr., Nathaniel Johnson, Betty Klinefelter, Lawrence E. Nicholson, Daniel Schesch, Daniel L. Schlafly, Dorothy C. Springer (Members of the Board of Education of the City of St. Louis); and Robert E. Wentz (Superintendent of Schools of the City of St. Louis),

Defendants.

CALDWELL PLAINTIFFS-INTERVENORS' AMENDED, SUPPLEMENTAL AND CROSS COMPLAINT FOR INTERDISTRICT DESEGREGATION

Introductory Statement

1. This is an amended and supplemental complaint, and as against the plaintiff-intervenor City of St. Louis, a cross-complaint, seeking declaratory and injunctive relief to redress the deprivation under color of state law of the rights, privileges, and immunities secured by the United States Constitution and laws to all school children in the St. Louis metropolitan area,

which includes the City of St. Louis and St. Louis, St. Charles and Jefferson Counties.

2. The State of Missouri and other defendants have, pursuant to constitutional and statutory policy, and (sic) ingrained practice, custom and usage, operated either a racially dual metropolitan system of public education or denied public educational opportunities altogether to black children in the St. Louis metropolitan area. Prior to 1954 this racially dual metropolitan-wide system of public education was mandated and enforced by explicit constitutional and statutory law. Those school districts with black residents either operated separate schools for black students or transferred black students to separate schools for blacks operated by other school districts in the St. Louis metropolitan area.

3. In addition to the racially discriminatory policies and practices of State and local educational authorities, racially discriminatory governmental housing and land-use policies and practices and racial discrimination in the private sector supported by such public policies and practices are also substantially responsible for the school and residential racial segregation which characterizes the St. Louis metropolitan area. Discriminatory housing and land-use policies have worked in a reciprocal relationship with the segregative policies and practices of school authorities to create and perpetuate racially segregated schooling in racially segregated neighborhoods. These policies and practices have contained black persons in prescribed neighborhoods and schools in central and north St. Louis and contiguous suburban communities while parts of South St. Louis and the substantial remaining parts of the metropolitan area have been preserved for residence and schooling for whites only.

4. Despite the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), the State of Missouri and the other defendants herein continued their policies and

practices of *de jure* racial dualism throughout the metropolitan area, and failed and refused to discharge their constitutional duty to dismantle the dual system of public education they created in the St. Louis metropolitan area. Instead, the defendants have through numerous actions prepetuated, expanded and entrenched the racially dual system. The State of Missouri and other defendants herein have also initiated and perpetuated residential racial segregation that has contributed to, and operated in lock-step with, the area-wide dual system of segregated schools, and frustrated court-ordered desegregation, including desegregation of the St. Louis public school system. The result of this compounded dual system is that the great majority of schools and school districts in the metropolitan area are rigidly segregated along racial lines.

5. The public school systems in the St. Louis metropolitan area therefore continue to bear the vestiges of the racially dual system of public education set in place by defendants prior to 1954 and exacerbated by intentional discriminatory conduct thereafter. Plaintiffs-intervenors therefore pray for a declaratory judgment that the public schools in the St. Louis metropolitan area are unconstitutionally segregated by race, and for a permanent injunction implementing a system-wide inter-district desegregation plan for the St. Louis metropolitan area that will eliminate the vestiges of the racially dual metropolitan-wide system of public education established by defendants prior to 1954 and continued to the present.

Jurisdiction

6. The subject-matter jurisdiction of the Court is invoked pursuant to 28 U.S.C. §§1331(a), 1343(3) and (4), 2201, and 2202, with respect to causes of action arising under 42 U.S.C. §§1981, 1982, 1983, 1988 and 2000d, and the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

Parties Plaintiff

7. The plaintiffs-intervenors, Earline Caldwell, et al., named in the caption of this complaint, are children attending Missouri public schools in the City of St. Louis, and their parents, and the National Association for the Advancement of Colored People through its St. Louis City Branch. The Caldwell plaintiffs were permitted to intervene by virtue of a 1976 decision of the Court of Appeals, *Liddell* v. *Caldwell,* 546 F.2d 768 (1976), *cert. denied,* 433 U.S. 914 (1977).

8. Pursuant to FED. R. CIV. P. 23(a) and (b)(2) plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated. Plaintiffs represent a class consisting of all citizens of the United States who are students, and their parents, presently attending or who in the future will attend the public schools in the St. Louis metropolitan area.

9. The members of the class represented by plaintiffs are so numerous as to make it impracticable to bring them all before the Court; there are common questions of law and fact affecting the rights of plaintiffs and rights of members of the class; the claims of plaintiffs are typical of the claims of the class; and plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the class have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Parties Defendant

10. The orginal defendants in this action are the Board of Education of the City of St. Louis (a body corporate organized under the laws of Missouri, with certain State-delegated authority to supervise the instruction of pupils in the City of St. Louis), its individual members, its superintendent of schools, and its area superintendents (named in the caption) [hereinafter referred to as "St. Louis Board" and included in all references to "school district defendants"]. On 9 January 1981 the Board

moved for leave to file a proposed cross-claim, and for leave to add additional parties to its cross-claim, seeking essentially the same relief (against most of the same parties) as this complaint seeks.

11. The added defendants State of Missouri, State Board of Education, and State Commissioner of Education (named in the caption) were added to this case as parties defendant by order of this Court dated 13 July 1977. The Governor, Attorney General, Treasurer, and Commissioner of Administration of the State of Missouri, along with the individual members of the State Board of Education (all named in the caption), were added as parties defendant to this litigation by order of this Court entered 27 June 1980. The State Board of Education is a body corporate organized under the laws of Missouri and is charged with the general power and responsibility for the supervision of public education in Missouri, to assist the State in fulfilling the obligation imposed by the Missouri Constitutuion to provide for the establishment and maintenance of free public schools for the gratuitous instruction of all persons. The State Board also is the successor in interest and responsibility to the previously existing St. Louis County, St. Charles County, and Jefferson County Boards of Education, established by the State in 1948 for the purpose of consolidating and reorganizing school districts, and abolished in 1979. The individual State defendants are sued in their official capacities. [Hereinafter these defendants will be referred to as "State defendants."]

12. The City of St. Louis, permitted to intervene as a party plaintiff by prior order of the Court, is a municipal corporation organized under the laws of Missouri; the area of its jurisdiction is co-extensive with that of the St. Louis Board. This complaint states a cross-claim against the plaintiff-intervenor City of St. Louis, including its Community Development Agency [hereinafter included in references to "housing and local government defendants"].

13. Added defendant Special School District of St. Louis County is an educational instrumentality of the State of Missouri organized in 1957, with jurisdictional boundaries coterminous with St. Louis County, to provide educational opportunities to handicapped children. In 1965 the State Board of Education designated the Special District to also provide vocational and technical educational programs for the entire county. The Special District was added as a party defendant on 12 September 1980 on the motion and complaint of the Caldwell plaintiffs-intervenors.

Newly-Added Parties Defendant

14. Each of the following newly added defendants [hereinafter included among "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the Missouri public educational system (some of the newly added defendants are successors to previous bodies corporate organized for the same purposes):

(a) Affton Board of Education;

(b) Bayless Board of Education;

(c) Brentwood Board of Education;

(d) Clayton Board of Education;

(e) Ferguson-Florissant Board of Education;

(f) Hancock Place Board of Education;

(g) Hazelwood Board of Education;

(h) Jennings Board of Education;

(i) Kirkwood Board of Education;

(j) Ladue Board of Education;

(k) Lindbergh Board of Education;

(l) Maplewood-Richmond Heights Board of Education;

(m) Mehlville Board of Education;

(n) Normandy Board of Education;

(o) Parkway Board of Education;

(p) Pattonville Board of Education,

(q) Ritenour Board of Education;

(r) Riverview Gardens Board of Education;

(s) Rockwood Board of Education;

(t) University City Board of Education;

(u) Valley Park Board of Education;

(v) Webster Groves Board of Education;

(w) Wellston Board of Education.

15. Each of the following newly-added defendants [also included hereafter among "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the State system of public education, each of which is located in St. Charles County:

(a) Fort Zumwalt Board of Education;

(b) St. Charles County R-V Board of Education;

(c) Wentzville R-IV Board of Education;

(d) St. Charles Board of Education; and

(e) Francis-Howell R-III Board of Education.

16. Each of the following newly-added defendants [also "school district defendants"] is a body corporate organized under the laws of Missouri with certain State-delegated authority to supervise the instruction of pupils attending the State's system of public education; each defendant is located in Jefferson County:

(a) Dunklin R-V Board of Education;

(b) Hillsboro R-III Board of Education;

(c) Fox C-6 Board of Education;

(d) Festus R-VI Board of Education;

(e) 47 Crystal City Board of Education;

(f) 73 DeSoto Board of Education;

(g) Windsor C-1 Board of Education;

(h) Grandview R-III Board of Education;

(i) (E) Jefferson Co. R-VII Board of Education;

(j) Northwest Jefferson Co. R-I Board of Education; and

(k) Sunrise R-IX Board of Education.

17. Each of the following newly-added defendants [hereinafter included among "housing and local government defendants"] is a political subdivision of the State of Missouri organized pursuant to the State's constitution and laws:

(a) St. Louis County;

(b) St. Charles County;

(c) Jefferson County.

18. The newly-added defendant Missouri Housing Development Commission [among the "housing and local government defendants"] is a body corporate organized under the laws of Missouri to assist in the development and financing of low- and moderate-income housing.

19. The following two newly-added defendants are municipal corporations organized under the laws of Missouri for the purposes of clearing, replanning, and reconstructing areas in which unsafe housing conditions exist, and of providing safe and sanitary dwelling accommodations for persons of low income:

(a) Housing Authority of St. Louis County;

(b) Housing Authority of the City of St Louis.

20. The following two newly-added defendants ["housing and local government defendants"] are municipal corporations organized under the laws of Missouri for the purposes of clearing and replanning areas in which unsafe housing or other buildings exist:

(a) Land Clearance for Redevelopment Authority of St. Louis County;

(b) Land Clearance for Redevelopment Authority of the City of St. Louis.

Summary of Claim for Relief

21. All of the foregoing defendants — original, added, cross and newly-added — are jointly and severally liable for the creation, maintenance, perpetuation and expansion of the racially dual system of public education extant in the St. Louis metropolitan area. From the time the defendant State of Missouri became a state (as a slave state) until the present time, it has, pursuant to explicit constitutional and statutory policy and ingrained practice, custom and usage, either operated a racially dual system of public education, or denied public educational opportunities altogether to black children, in the St. Louis metropolitan area. The State has carried out this system of educational apartheid through various of its agencies and instrumentalities, including the other defendants, as well as through the joint and reciprocal cooperation and participation of the United States of America and various of its agencies and instrumentalities, which have also pursued policies, practices, customs and usages of purposeful racial segregation, all of which individually and in combination have caused and continue to cause severe racial segregation of black school children and teachers throughout the St. Louis metropolitan area. All defendants in this case have, with segregative intent and with profound segregative impact, created and directly contributed to the entrenched racially segregated schooling which characterizes the total St. Louis community. In addition to the

racially discriminatory policies, practices, customs and usages of the defendant educational authorities (State defendants and school district defendants), reciprocally interrelated, racially discriminatory governmental housing and land-use policies and practices, and racial discrimination in the private sector spawned and supported by such public policies and practices, including those of the State defendants, are also substantially and directly responsible for the massive school and residential racial segregation which characterizes the St. Louis metropolitan area.

The Pre-Brown Metropolitan-Wide Dual System

22. Prior to the Civil War the defendant State of Missouri prohibited altogether the public education of black children. For a period of 90 years after the Civil War, until the Supreme Court's 1954 decision in *Brown* v. *Board of Education,* the State defendants and school district defendants and their predecessors, pursuant to the explicit command of state constitutional and statutory law, operated a system of public education in the St. Louis metropolitan area and throughout the State that was completely segregated along racial lines, and which enforced upon black children unequal education and unequal educational opportunities.

23. The racially dual system of public schooling described in the preceding paragraph operated hand-in-glove, in a reciprocal interrelationship, with a similar racially dual system of housing (*see* ¶¶ 28-30, *infra*) which prescribed areas for the occupancy of blacks only (the largest such areas being prescribed in the City of St. Louis) and preserved the remainder of the metropolitan area for the occupancy of whites only. Wherever black persons were so allowed to reside, they were uniformly required to attend schools for blacks only, often at great inconvenience and always in a racially unequal fashion. During this period, for example, the State legislatatively created a black high school district in St. Louis County, expressly providing for the inter-district transfer of black children, and later authorized county

boards of education to pay the tuition costs of black students transferred to black schools in different school districts.

24. Prior to the Supreme Court's 1954 *Brown* decision, the State defendants and school district defendants and their predecessors, acting in concert and individually, pursued a policy of strict racial segregation between and among school districts in the St. Louis metropolitan area. Pursuant to this *de jure* policy, the State defendants and school district defendants provided schools for the education of black pupils only in certain school districts, while other school districts with schools for whites only were required to, and did, transfer their black students across district, county, and city lines to districts with schools designated for the education of blacks only. This racially dual system of public education was established and operated under color of and pursuant to state law on a metropolitan-wide basis without regard to the jurisdictional lines of the various agencies, instrumentalities, and political subdivisions of the State who are defendants herein.

25. By the time of the *Brown* decision black school-age children were residing in at least 27 of the school districts in the three counties and the City of St. Louis included in the St. Louis metropolitan area. Yet, only five of these districts operated high schools for the education of black children, while the remainder provided no high school educational opportunities for blacks within their jurisdictional areas. In addition, six of the districts with black school-age children did not even operate elementary schools for the education of black children. Black school-age children residing in school districts with no black high schools and/or elementary schools were transferred to black schools in the City of St. Louis, other counties, or other defendant school districts within their own county; lived away from home with relatives or others in districts which provided schools for black children; or were discouraged altogether from attending public school.

26. The State defendants and school district defendants arranged, supported, managed, supervised, and funded the pre-*Brown* dual system, including the inter-district segregative student transfers in the St. Louis metropolitan area described in the preceding paragraphs. State funds were earmarked for the creation and maintenance of segregated schools, with the State funding educational services on a racially segregated basis and in a manner that disadvantaged black students, black faculty, black schools, and black school districts in the St. Louis metropolitan area. Black schools and black school districts were maintained at a level of quality that was grossly inferior to that of white schools and white school districts.

27. Prior to *Brown* the State and School District defendants also required total racial segregation in the assignment of faculties, so that black schools in the metropolitan area had only black faculties and white schools had only white faculties. For many years the State and School District defendants compensated black faculty members, solely because of their race, at a lower rate than white faculty members were paid.

28. Also prior to the 1954 *Brown* decision, the State defendants and the housing and local government defendants and their predecessors, operating in reciprocal interrelationship with the policies and practices of racially dual schooling described above, participated in the creation and perpetuation of the above-described dual metropolitan area-wide system of public education by requiring and encouraging racial segregation in residential housing throughout the metropolitan area. This was accomplished through municipal ordinances requiring mandatory residential segregation by race, state-court enforcement, sanction and encouragement of racially restrictive covenants forbidding the sale of specified properties to black persons, the recording of such covenants throughout the metropolitan area by state and local officials, and the operation of conventional public housing in the metropolitan area on a racially segregated basis.

29. From the time of the first national housing programs in the 1930's, the official policies and practices of racial residential segregation described in the preceding paragraph were reinforced and exacerbated by the intentionally segregative policies and practices of the federal government (through the federal Department of Housing and Urban Deveopment, the Federal Housing Administration, the federal Veteran's Administration, the Interstate Highway Program, and other present and predecessor federal agencies), which had a severe segregative impact, both directly and through the federal government's highly influential leadership role in the nation's housing market, on the creation, maintenance and perpetuation of this process of ghettoization.

30. The discriminatory housing and land-use policies described in the two preceding paragraphs have worked in lock-step with the segregative policies and practices of state and local school authorities (*see* ¶¶ 22-27, *supra*) to create, perpetuate and exacerbate racially segregated schooling in racially segregated neighborhoods throughout the St. Louis metropolitan area. These intentionally segregative policies and practices have contained black persons in the St. Louis metropolitan area to totally segregated neighborhoods and schools in central and north St. Louis and contiguous suburban communities (which have been transformed into black areas by the same expanding process of racial containment and ghettoization), as well as a few historic county areas set aside for blacks, while parts of south St. Louis and the substantial remaining parts of the St. Louis metropolitan area have been rigidly preserved for residence and schooling for whites only.

31. The State defendants and the housing and local government defendants have engaged in other forms of official racial discrimination which have fostered and reinforced the racially dual system of public education in the St. Louis metropolitan area prior to *Brown,* including racial discrimination in public and private employment; racially discriminatory annexations

and de-annexations; racial segregation of public facilities and accommodations; and racially discriminatory law-enforcement policies and practices. These actions had the purpose and effect of confining, and of re-enforcing the confinement of, black persons to prescribed residential communities and facilitating the complete racial segregation of public schools throughout the metropolitan area.

Post-*Brown* Perpetuation and Exacerbation of the Metropolitan-Wide Dual System of Public Education

32. Although the above-described policies and practices and their pronounced segregative impact were declared unconstitutional by the Supreme Court in its 1954 decisions in *Brown* v. *Board of Education* and *Bolling* v. *Sharpe,* the defendants have failed and refused to engage in the affirmative corrective action necessary to uproot the widespread, deeply entrenched impact of their pre-*Brown* segregative conduct. On the contrary, these defendants have continued in the post-*Brown* era to engage in affirmative segregative conduct, as well as to pursue policies and practices which have had the effect of continuing and greatly expanding the racially dual metropolitan-wide system of public education. This continued intentional segregation and the persistent failure and refusal to take affirmative remedial action have compounded, exacerbated, further ingrained and massively expanded government-imposed school segregation in the St. Louis metropolitan area. The defendants have had numerous opportunities and ample power to remedy this profound constitutional violation, but instead by their conduct they have continued and expanded the violation and all of its effects and ramifications.

33. As established by the adjudicated facts of this case, the State and St. Louis Board defendants engaged in a wholesale violation of the affirmative remedial obligation imposed upon them by the Fourteenth Amendment as construed in the *Brown* decision by perpetuating and magnifying that part of the area-

wide dual system existing in the City of St. Louis, which contained at the time of *Brown,* as it does now, a substantial majority of the black people in the St. Louis metropolitan area. By virtue of the orders of this Court and the Court of Appeals, the State defendants and the St. Louis Board have recently been required to undertake affirmative remedial steps to eradicate the City of St. Louis part of the metrcpolitan dual system. Nevertheless, it is the express finding of this Court and it is a fact that the court-ordered remedy falls far short of liquidating the City of St. Louis part of the metropolitan dual system. Moreover, because of the prolonged delay in taking affimative remedial action, the greatly increased magnitude of the dual system, and the extensive inter-district segregative effects of the City part of that system, no remedy confined to the City of St. Louis is capable of fulfilling the affirmative constitutional obligation of the State and other defendants, including the St. Louis Board, to dismantle the State's metropolitan dual system root and branch.

34. In recent years the St. Louis Board has proposed, and by its recently filed cross claim now formally seeks, an inter-district desegregation remedy designed to dismantle this dual system. The State and some of the other defendants, most recently within the past month, have persistently refused and rejected the St. Louis Board's proposals. Each instance of such failure and refusal to fulfill their affirmative duty thus continues the violation of the Fourteenth Amendment on the part of the State and other defendants. Similar opportunities have been presented to the Missouri legislature, and it has similarly failed and refused to take action to fulfill the State's affirmative Fourteenth Amendment duty.

35. The State defendants and school district defendants have continued to fund, with substantial federal financial assistance since 1965, the perpetuation and exacerbation of the racially dual system of public schools in the St. Louis metropolitan area.

36. The most serious of the failures and refusals to engage in an affirmative remedy by the State and school district defendants, and their predecessors, are the numerous opportunities for school district consolidation and reorganization which would have provided the framework and means for eradicating the metropolitan dual system. Instead, the extensive program of school district consolidation and reorganization that has been carried out during the post-*Brown* era has exacerbated, rather than alleviated, the racially dual system of public schooling extant in the metropolitan area. Of all of the defendant school districts, only the St. Louis school district has jurisdictional lines that are related to political subdivision lines. Every municipality has territory in more than one school district, and at least one school district encompasses parts of two counties. The isolation of the St. Louis school district by confining it to the limits of the City of St. Louis is a further breach of the State defendants' affirmative constitutional duty.

37. With respect to the Special School District of St. Louis County, plaintiffs incorporate by reference their amended and supplemental complaint filed against the Special District pursuant to order of this Court entered 12 September 1980.

38. The State defendants and the housing and local government defendants have never undertaken and are not now undertaking any action to counteract the entrenched racial residential and school segregation in the St. Louis metropolitan area caused by their discriminatory conduct reciprocally reinforcing the dual system maintained by the defendant school authorities. Moreover, the State defendants and the housing and local government defendants have continued to pursue segregative housing policies and practices that have restricted and continue to restrict the location of black persons to prescribed residential communities in the metropolitan area. Such policies and practices have perpetuated and exacerbated the racially dual system of public education and have frustrated school desegregation efforts in the St. Louis metropolitan area, including those ordered

by this Court. The United States and the Community Development Agency of the City of St. Louis have recently submitted to the Court outlines of proposed remedial plans, the development of which was previously ordered by the Court for the purpose of insuring that the future operation of federally-assisted housing programs would facilitate, rather than continue to retard, school desegregation. The plan outlines submitted pursuant to the Court's order are wholly inadequate to redress the substantial contribution of the past discriminatory operation of these programs to the perpetuation of the area-wide dual system.

39. The dual school system complained of herein extends throughout the St. Louis metropolitan area, resulting from the enforcement of intentional inter-district racial school and residential segregation, and from the inter-district effects of unliquidated intra-district intentional segregation. The defendants have failed and refused to dismantle this system, and their failure and refusal will continue unless they are ordered otherwise by this Court.

Causes of Action

40. The defendants named herein and their predecessors and instrumentalities have denied and deprived plaintiffs and their class of their federal constitutional and legal rights, privileges and immunities, as follows:

(a) by creating, operating, financing and perpetuating a racially dual area-wide system of public education pursuant to policies, practices, customs and usages of intentional racial segregation and discrimination in violation of the equal protection guarantees of the Thirteenth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983; in violation of the rights secured by 42 U.S.C. §1981 and the Thirteenth Amendment to the full and equal benefits of all laws and proceedings for the security of persons and property as are enjoyed by white citizens; in violation of the rights secured by 42 U.S.C. §1982 to the same right to hold and enjoy real property as is en-

joyed by white citizens; and in violation of the right secured by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*, to be free of racial discrimination in the operation of federally funded programs;

(b) by knowingly continuing said violations of constitutional and legal rights and failing to take affirmative remedial steps to convert to a metropolitan-wide system of public education freed of the vestiges of government-imposed racial segregation and discrimination, as required by the provisions of the federal constitution and laws cited in subparagraph (a);

(c) by refusing and failing to afford plaintiffs and their class effective protection from such government-fostered and -imposed racial discrimination.

Prayer for Relief

41. The public schools of the St. Louis metropolitan area have always been and are now severely segregated on the basis of race by reason of the unconstitutional conduct of the defendants herein, and their predecessors. Unless enjoined by order of this Court, the defendants will continue to fail and refuse to dismantle the unconstitutional dual system of public education in the St. Louis metropolitan area. There is no adequate remedy at law.

42. WHEREFORE, the Caldwell plaintiffs-intervenors, on their own behalf and on behalf of all those similarly situated, pray the Court as follows:

(a) Enter a declaratory judgment that the policies, practices, customs and usages of the defendants complained of herein are unconstitutional and unlawful;

(b) Enter a permanent injunction enjoining defendants, their agents and instrumentalities, and all those in active concert or participation with them, to develop and implement comprehensive remedial plans designed to eliminate, through equitable (including two-way) desegregative pupil and teacher reassignments, necessary governance reorganization, desegregative housing programs, and/or any other effective means, at the earliest practical date all vestiges of government-imposed racial segregation and discrimination from the public schools in the St. Louis metropolitan area, and barring such segregative conduct in the future;

(c) Award the plaintiffs-intervenors their costs, including reasonable attorneys' fees and out-of-pocket expenses, and such other and further relief as justice and equity demand.

Dated: 16 January 1981

Respectfully submitted,

/s/ Thomas I. Atkins
General Counsel, NAACP

Teresa Demchak
1790 Broadway
New York, New York 10019
(212) 245-2100

William E. Caldwell
Richard B. Fields
Ratner & Sugarmon
525 Commerce Title Bldg.
Memphis, Tennessee 38103
(901) 525-8601

Charles H. Staples
Suite 647, 818 Olive Street
St. Louis, Missouri 63101
(314) 621-6108

Of Counsel:
Paul R. Dimond
O'Brien, Moran & Dimond
320 North Main St.
Ann Arbor, Mich. 48104
(313) 769-6838

William L. Taylor
Center for National Policy Review
Catholic University Law School
Washington, D.C. 20064
(202) 832-8525

Attorneys for Plaintiffs-Intervenors

APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Craton Liddell, et al,

and

Earline Caldwell, et al,

City of St. Louis,

Janice Adams, et al,

and

Mary Puleo, et al,

United States of America,

Appellees,

vs.

Board of Education of the City of St. Louis, et al,

and

State of Missouri, et al,

Special School District of St. Louis County,

St. Louis County, et al,

and

Affton School District, et al,

Appellants

Appeals from the United States District Court
for the Eastern District of Missouri.

No. 81-1828 —
Adams Group

No. 81-1940 —
State of Missouri and Officials

No. 81-2003 —
St. Louis City Board of Education

No. 81-2042 —
Caldwell Group

No. 81-2043 —
St. Louis City Board of Education

No. 81-2086 —
Riverview Gardens School District

No. 81-2127 —
Hazelwood School District

No. 81-2134 —
St. Louis County Governmental Officials

No. 81-2135 —
Mehlville Board of Education

No. 81-2136 —
Lindbergh and Affton School Districts

No. 81-2137 —
Rockwood Board of Education

No. 81-2138 —
Webster Groves Board of Education

No. 81-2139 —
Parkway School District

No. 81-2140 —
Ladue School District

Submitted: January 11, 1982

Filed: February 25, 1982

Before, HEANEY, BRIGHT and STEPHENSON, Circuit Judges.

HEANEY, Circuit Judge.

Questions concerning the integration of the public schools of the City of St. Louis have been before this Court on numerous occasions and before the United States Supreme Court three times.[1] Pursuant to our opinions and those of the United States District Court for the Eastern District of Missouri, some steps toward the goal of an integrated school system have been taken. The previously all-white schools in South St. Louis have been integrated. Some integrated educational programs and opportunities have been provided to the 30,000 black students who still attend all-black schools, and efforts are being made to improve the quality of education in those schools. A number of integrated magnet schools have been opened. A start has been made toward integrating the vocational education programs of the city and county schools. In addition, a modest beginning toward voluntary interdistrict desegregation has been undertaken. As in many school districts with a long history of racial segregation, progress has been slow. Firm direction, however, has been provided by former Chief Judge James Meredith and Judge William Hungate.

---

[1]We have filed three major opinions in this litigation: *Liddell v. Board of Education,* Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir. Feb. 13, 1981), *cert. denied,* 50 U.S.L.W. 3447-3448 (Nov. 30, 1981) (*Liddell II*); *Adams v. United States,* 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied,* 449 U.S. 826 (1980) (*Adams*); and *Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976), *cert, denied,* 433 U.S. 914 (1977) (*Liddell I*).

We have also filed two orders which are referred to in this opinion. *Liddell v. Board of Education,* Nos. 81-1184, et al (8th Cir. Dec. 2, 1981) (order) (*Liddell IV*); and *Liddell v. Board of Education,* Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir. Mar. 19, 1981) (order) (*Liddell III*).

The shortened reference form designated in the parenthetical following each citation will be utilized for subsequent citations in our opinion.

The major questions presented in these appeals may be grouped into four categories:

(1) *Desegregation Costs.* Did the district court err in determining the share of the 1980-1981 costs for desegregating St. Louis schools that the State of Missouri was obligated to pay; in determining that the state would be required to pay one-half of the actual desegregation expenses in the 1981-1982 budget; and in determining that the state was required to pay certain costs relating to the implementation of the voluntary interdistrict plan.

We hold that it did not err in any of these rulings. We urge the State of Missouri to participate in the budget-making process so that the annual budget can be determined on a cooperative rather than an adversary basis.

(2) *Vocational Education.* Did the district court err in adopting a plan for the merger of vocational educational programs of the city and county schools and in requiring the state to pay certain costs relating to the merger.

We hold that it did not and emphasize the necessity of closely monitoring the plan to ensure that the integration goals set forth therein are promptly and fully met.

(3) (a) *Joinder of Suburban Districts and County Units of Government.* Did the district court err in joining St. Louis County, certain county officials and seventeen suburban schools in St. Louis County as parties-defendant in the pending case and in postponing a decision as to whether other suburban school districts and governmental units should be joined.

We hold that we are without jurisdiction to consider these questions.

(b) *The 12(c) proceedings and interdistrict relief.* Did the district court err in severing the issue of mandatory interdistrict

relief from the pending paragraph 12(c)[2] proceedings and in requiring that the latter proceedings go forward immediately even though questions relating to the liability of suburban school districts and county defendants have not been adjudicated and even though no suburban school districts are parties to the 12(c) proceedings.

We hold that the severance order is not presently appealable, but suggest that the interdistrict liability proceedings be temporarily postponed until after the district court has entered its order in the pending 12(c) proceeding and that they go forward promptly thereafter. In so holding, we note that relief granted in present 12(c) proceeding must be based on the established liability of the state defendants and the Board of Education of the City of St. Louis. We emphasize that suburban school districts that voluntarily participate in efforts to integrate city schools will not, by such participation, admit liability or waive any right that they may presently have to be excluded from a plan of mandatory interdistrict desegregation.

(4) *Recusal.* Did Judge Hungate err in failing to recuse himself from conducting further proceedings in the intradistrict aspects of this case, including the paragraph 12(a)-12(d) proceedings, or in recusing himself from its interdistrict component.

---

[2]In its order of May 21, 1980, the district court directed in paragraph 12(c), that the state defendants and city board develop and submit a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school desegregation in the City of St. Louis and St. Louis County. *Liddell v. Board of Education,* 491 F.Supp. 351, 353 (E.D. Mo. 1980). We expressly affirmed paragraph 12(c) both as originally entered, *Liddell II,* slip op. at 19-20, and as subsequently amended by the district court, *Liddell III,* slip op. at 13-17. Paragraph 12(c), as we subsequently observed, "essentially requires the development and submission of proposed interdistrict desegregation plans * * *." *Liddell IV,* slip op. at 8.

Paragraph 12(c) apparently has confused many parties. As a result, we discuss that provision in Part (3) (b), *infra.*

We hold that we are without jurisdiction to entertain an appeal on these recusal issues and we deny mandamus relief. We observe, however, that no legal basis appears to support Judge Hungate's recusal from either phase of the case. This case was originally assigned to Judge Hungate by Chief Judge H. Kenneth Wangelin. On remand, the Chief Judge may, if he deems it in the interests of judicial administration, reassign Judge Hungate to the interdistrict phase of the case or assign that phase to another judge.

(1) *Desegregation Costs.*

Two appeals have been filed with respect to payment of the costs of integrating the city schools. In No. 81-1940, the state renews its contention that it cannot be required to pay the costs of implementing a 12(a) plan for voluntary pupil transfers between the city schools and those of St. Louis County. It also asserts that the district court erred in approving the city school budget for Year Two of the desegregation plan and in requiring it to pay one-half of the desegregation costs for that year. In No. 81-2003, the Board of Education of the city schools challenges the district court's determination with respect to the costs of desegregation that are to be borne by the state for the 1980-1981 school year.

(a) *The State's Liability Under 12(a).*

We held in *Adams* that the state had substantially contributed to the segregation of the public schools of the City of St. Louis.[3] No appeal was taken from that decision by the state. That decision has been settled and will not be reopened. *See generally United States v. United States Smelting, Refining and Mining Co.*, 339 U.S. 186, 198 (1950); 1 B. Moore's Federal Practice ¶ 0.404, p. 401-405 (1980). In addition, we specifically sustained

---

[3] *Adams, supra,* 620 F.2d at 1294 & n.27, 1295 & n.28. *See also Liddell II,* slip op. at 28.

the validity of paragraph 12(a) of the district court's order of May 21, 1980, in our February 13, 1981,[4] decision. The Supreme Court denied certiorari review of that decision on November 30, 1981.[5]

Paragraph 12(a) is entirely enforceable against the state defendants; they are primary constitutional wrongdoers and, therefore, can be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district. *Hills v. Gautreaux,* 425 U.S. 284 (1976).

(b) *The Desegregation Budgets (1980-1981 and 1981-1982).*

In our February 13, 1981, decision, we affirmed the district court's plan for integrating city schools. *Liddell II,* slip op. at 10, 12-25. We also affirmed the district court's order which required the state to pay one-half of the actual costs of implementing that desegregation plan in four equal installments. *Id.* at 28-29. These determinations are the law of the case.

---

[4]*Liddell II,* slip op. at 19. Paragraph 12(a) directed the state defendants and city board to "make every feasible effort" to work out a voluntary plan of interdistrict pupil exchanges between the city school district and the suburban districts. *Liddell v. Board of Education, supra,* 491 F.Supp. at 353. *See also Liddell III,* slip op. at 13-17; *Liddell II,* slip op. at 19.

Paragraph 12(a) was designed to help remedy the proven unconstitutional segregation of the city schools as part of and in conjunction with the overall desegregation plan which we approved in *Liddell II.*

[5]*See* n.1, *supra.* In its petition for a writ of certiorari, the state contended in part that the district court exceeded its authority in ordering the preparation of a voluntary interdistrict pupil exchange plan (paragraph 12(a)) because an interdistrict violation was neither pleaded nor proven and it should not be held responsible to fund an interdistrict plan on the basis of an intradistrict violation.

The desegregation plan was implemented by the city board at the beginning of the 1980-1981 school year. The estimated cost of implementing the plan for the 1980-1981 school year was just over twenty-two million dollars and the district court approved a budget in that amount. *Liddell v. Board of Education,* 491 F.Supp. 351, 356 (E.D. Mo. 1980).[6] The actual cost for that school year was less than budgeted—approximately nineteen million dollars. The city board contends that the state refused to pay its full one-half share of these costs. It asserts that the district court erred in failing to grant the city board's motion to compel the state to pay the city board an additional $1,042,000.[7] *See Liddell v. Board of Education,* No. 72-100C(4) (July 14, 1981) (H(237)81).[8] The city board also contends that "the bulk" of the programs for which expenditures were made—and to which the state objects—"were specifically mandated by the desegregation plan, with the few remaining items being required, without dispute, by necessary implication." Accordingly, it submits that the expenditures at issue are a legitimate part of the total cost of integration and the state should be required to pay its full one-half share.

The state concedes that it forwarded a fourth-quarter payment of $894,668.50 to the city board instead of the $1,324,668 requested. It argues, however, that the specific expenditures it contests "were not included in the 1980-1981 budget approved by the [district court] * * * on May 21, 1980." It also contends that the equities of this case are in its favor because "[s]ubstan-

---

[6]We affirmed the district court's decision in *Liddell II.*

[7]The $1,042,000 figure was supplied by counsel for the city board at oral argument. The district court's July 14, 1981, order (H(237)81) stated that $1,452,000 was the sum in dispute.

[8]The district court subsequently denied the city board's motion to reconsider the July 14, 1981, order and the city board's supplemental motion to compel on August 5, 1981. *Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo., Aug. 4, 1981) (H(294)81 and H(301)81).

tial portions of the programs in question were funded from in kind contributions from private and governmental sources." The state also charges that the city board's financial figures contain unexplained discrepancies and that the city board's bookkeeping evidences "sloppiness and inefficiency." In short, the state contends that the district court's rulings concerning the funding of the Year One (1980-1981) desegregation budget were well within its discretion.

The city board's reply brief correctly argues that the sole fiscal issue for Year One is to determine the numerical figure which constitutes one-half of the actual costs ($19,152,503) of the 1980-1981 desegregation plan.[9] It asserts that instead of paying its one-half share of $9,576,251, the state paid only $8,530,000.

The district court refused to order the state to pay a larger share of the 1980-1981 budget. It stated:

> To determine proper allocation of the costs of desegregation programs, even though supported by the Danforth Foundation and other contributors, the City Board's in haec verba interpretation of Judge Meredith's order and appeals court's opinion is literally correct. In exercising its powers in equity, however, the Court is reluctant to impose such a restrictive application of funding orders.
>
> Because the expenditures for budget items captioned Other Programs have been offset by the Danforth Foundation and other contributors, the Court finds that the actual cost to the City Board of implementing the desegregation plan has been reduced by public and private contributions.

---

[9] *See Liddell IV,* slip op. at 7. The state must pay one-half of the actual desegregation costs under this plan. *E.g., Liddell II,* slip op. at 28-29.

Judge Meredith's order of May 21, 1980, required the state to pay one-half of the cost of implementing and operating the city board's desegregation plan for the year 1980-1981. Our opinion of February 13, 1981, affirmed that order and emphasized that only actual costs were to be included in the total.[10] Both this Court and the district court were aware of the fact that the federal government would pay a portion of the total costs and that such payments would serve to reduce the city school board's share of the total and not the state's share. Neither Judge Meredith nor this Court considered or discussed the possibility that others, including individuals, corporations, associations or foundations, would make contributions in kind or cash toward the costs of implementing or operating the desegregation plan. In logic, had this Court considered this possibility, it would have deemed such contributions to be comparable to the federal grants and would have directed that such contributions serve to reduce the city school board's, rather than the state's, share of the desegregation costs. But we did not consider that possibility. We are, therefore, reluctant to hold that the district court abused its discretion in giving the state the credit that it did in determining what constituted the state's one-half share for the first budget year, particularly since specific budget items are disputed.

Lest there be any misunderstanding, however, we make it clear that for budget Year Two (1981-1982) and succeeding budget years, the state is required to pay one-half of the *total actual costs* of implementing and operating the desegregation plan. The state's share shall not be reduced by grants or contributions received by the city board from other public or private agencies, individuals, associations or corporations to the extent that such grants or contributions are used to defer actual costs which have been approved by the district court in the budgetary process or thereafter. The district court, of course,

---

[10] *Liddell II*, slip op. at 29.

retains discretion to determine which actual costs are reasonably necessary for the implementation or operation of the plan to desegregate the city schools.

One further point should be made. The district court and this Court are ill-equipped to determine what the fair, reasonable and actual desegregation costs are. The state and the city board, on the other hand, have experts who regularly and routinely work on such matters. They should be involved in the budget-making process at an early date so that disputes can be resolved on a cooperative, rather than an adversary, basis.

The federal government, the state and the city school board all face a period of budgetary restraints. It will require maximum cooperation among them, as well as continued private contributions, if the constitutional rights of the black children of St. Louis are to be fully protected. We trust that such maximum cooperation will be forthcoming from the parties to this litigation. We commend those in the private sector who have given and will give of their time, money and resources to this most important endeavor.

(2) *Vocational Education.*

(a) *Background.*

On May 21, 1980, the district court made the following finding of fact:

> The existing dual system of vocational education split between the City of St. Louis and St. Louis County is neither educationally sound or administratively efficient. These systems, established in 1965 and 1967, are further evidence of the continuing failure of the State to take any effective measures to disestablish the dual system in the State. The State has the power to effectively merge these systems. Its failure to exercise that power is part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system in once formally mandated.

Liddell v. Board of Education, supra, 491 F.Supp. at 358. In a separate provision of its May 21, 1980, decision, paragraph 12(b), the district court ordered the state defendants and the St. Louis City Board of Education

> [t]o develop and submit to the Court * * * a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in 1981-82 school year.

Id. at 353.

On February 13, 1981, this Court affirmed both the districts court's factual finding and its paragraph 12(b) order. *See Liddell II,* slip op. at 19, where we held:

> Section (b) of paragraph 12 is also consistent with the district court's responsiblity to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." 491 F.Supp. at 358. Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit.[11] We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year.

---

[11]The Special School District of St. Louis County (SSD) was joined as a party defendant on September 12, 1980. *See, e.g., Liddell v. Board of Education,* No. 72-100C(4), at 2 (E.D. Mo. June 11, 1981)(H(181)81).

Counsel for the state conceded at oral argument that the district court expressly found that the state committed an inter-district constitutional violation by failing to merge the segregated city-county vocational programs. Although the state disagrees with that district court finding, we adhere to our February 13, 1981, affirmance of that finding and our approval of paragraph 12(b).[12]

Persuant to the rulings by the district court and this Court, the St. Louis City Board of Education, the state defendants and the Special School District of St. Louis County (SSD) submitted proposed plans to remedy the segregated vocational education programs in the city and SSD. *Liddell v. Board of Education,* No. 72-100C(4), at 3 (E.D. Mo., June 11, 1981) (order designated as H(181)81). The districts court's June 11, 1981, order (H(181)81) provides the following progression of events. On March 4, 1981, the district court set a hearing to begin on May 11, 1981, to consider the vocational education issues and establish pretrial procedures. The court subsequently specified an agenda and delineated the issue and evidence presentation schedule to be followed at the May 11, 1981, hearing. On May 8, 1981, the SSD filed another vocational education proposal which prompted extensive negotiations among the parties. The negotiations resulted in "a proposed consent decree supported by a majority of the parties and also a [proposed vocational education] plan agreed to by all the parties except the intervening * * * Adams group plaintiffs." Along with a proposed fund-

---

[12]We also note parenthetically that in September of 1978, the Office of Civil Rights (OCR) of the United States Department of Health, Education and Welfare found that the state's department of elementary and secondary education failed to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, with respect to the St. Louis metropolitan area vocational education programs. The OCR found, inter alia, that establishment of separate city-county vocational service areas did not comply with certain Title VI regulations.

ing order, these documents were submitted to the district court on May 20, 1981.[13]

The district court convened the vocational education hearing on May 11, 1981. At that time, the parties advised the district court that a settlement on the paragraph 12(b) vocational issues was "embarrassingly close." At the parties' request, the district court deferred holding the 12(b) hearing and as the settlement negotiations continued, the district court continued the 12(b) hearing on a day-to-day basis. The negotiations culminated in a written proposal and, on May 20, 1981, the parties submitted not only their consent decree, but also a proposed vocational education plan and funding order to the district court.

On the following day, a hearing was conducted during which the district court admitted, without objection, certain stipulations of fact and various exhibits offered by the Untied States. After all parties were allowed an opportunity to be heard, the district court issued a separate funding order and made the proposed consent decree and 12(b) plan part of the record.[14]

On May 27, 1981, the parties were notified that a hearing on the proposed paragraph 12(b) consent decree would begin on June 9, 1981. A notice to the Liddell class members was issued on that same day and the district court granted leave to interested individuals to request permission to appear in support

---

[13]More specifically, the proposals were submitted by the state, SSD, United States, NAACP—Caldwell plaintiffs and City of St. Louis. The district court signed the consent decree on May 21, 1981. *Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo. May 21, 1981) (order designated as H(132)81).

[14]The funding order was independently drafted by the district court and was not a part of the parties' other agreements and submissions. The funding aspects of the vocational education programs are separately discussed in part (2) (c), *infra.*

of or in opposition to the proposed decree or to file written memoranda stating their views.[15] The Adams group filed written objections to the 12(b) consent decree, the Liddell group orally expressed opposition to the consent decree, three letters from the public were received by the district court and the University City School District filed a memorandum commenting upon the parties' 12(b) proposal. The SSD and United States filed memoranda in support of the consent decree on June 2 and June 8, 1981, respectively.[16]

The district court summarized the submitting parties' positions thus:

> The parties have, in numerous filings with this Court, the Court of Appeals, and the United States Supreme Court, stated their position as to the facts and law regarding the issues. In the proposed consent decree submitted to the Court, the parties recited that
>
> > By consenting hereto no party retracts its previous positions or concedes that its respective positions are in any way erroneous. However, the parties being desirous of implementing a solution to the issues concerning paragraph 12(b) of the May 21, 1980 order without the expense of litigation, have agreed to the entry of the decree, and the Court being of the opinion that the entry of this decree will effectuate federal law * * *

---

[15]Even though the district court had signed the consent decree on May 21, *see* note 13, *supra,* it continued to treat the submissions as proposed, and eventually incorporated the terms of the submissions into its own order. *See* text at 17 *infra.*

[16]*See Liddell v. Board of Education,* No. 72-100C(4) (E.D. Mo. 1981) (H(150)81, a three-page memorandum in support filed by the SSD; and H(166)81, a twenty-five page memorandum in support filed by the United States).

> The City of St. Louis, the United States, the Caldwell plaintiffs-intervenors, and the Special School District support the consent decree without equivocation. The Board of Education of the City of St. Louis supports the decree in accordance with the funding order entered on May 21, 1981. The State has executed the consent decree and approves the vocational plan, but is critical of the funding order. The Liddell plaintiffs approve the plan, but withheld approval of the consent decree, questioning the adequacy of the jurisdictional statement in the first paragraph. The intervening plaintiffs, Adams, object to the plan and the decree.

Although the district court expressed reluctance to enter an order and judgment as a "consent decree" because the Adams group objected to the parties' 12(b) agreement, it expressly adopted the vocational education plan, which had been agreed to by seven of the eight parties, "as its [the district court's] plan to desegregate the vocational schools in the City of St. Louis and St. Louis County." The court simply appended the parties' 12(b) plan, in its entirety, to its June 11, 1981, order and specifically made the plan a part of that order. The district court also held that the parties' vocational education plan was fair, reasonable and adequate under all the circumstances and that it satisfied consitutional standards. It "adopt[ed] the [parties' vocational education] plan as its own" and ordered the SSD, the St. Louis City Board of Education and the State of Missouri to implement the plan. The district court's June 11, 1981, order to which the parties' vocational education plan was attached also contains various other provisions, but only those directly relevant will be subsequently discussed.

(b) *Challenges to District Court's Vocational Education Orders.*

We previously held that the Adams group may challenge the 12(b) plan adopted by the district court because that group never endorsed the underlying consent decree and consistently

preserved their objections to the parties' 12(b) plan. *Liddell IV,* slip op. at 5-6. We also allowed the state to "argue whether the financial obligations imposed upon it with respect to the vocational education plan are inconsistent with our previous mandates." *Id.* at 6. We dismissed the attempts by the state and SSD to escape their endorsement of the underlying consent decree and 12(b) plan. *Id.* at 4-6. Therefore, this part of the opinion involves two major issues: (1) the validity and constitutional sufficiency, on the merits, of the parties' consent decree and 12(b) plan which was adopted by the district court, and (2) the correctness of the district court's 12(b) funding orders.

We have carefully reviewed the May 21, 1981, consent decree drafted by the parties, compared it with the district court's June 11, 1981, order and conclude that the latter order adopted the consent decree without significant modification. The June 11, 1981, order tracked the consent decree's format throughout, but also: (1) added certain quotations from previous court opinions; (2) fleshed out and updated the procedural history culminating in the consent decree and 12(b) plan; (3) discussed the general legal principles applicable to consent decrees; (4) held that the 12(b) plan was fair, reasonable, adequate and constitutionally sufficient; (5) ordered the SSD, city board and state to file an interim progress report by July 15, 1983; and (6) added various funding provisions. These changes and additions, along with several nonsubstantive editorial changes made by the district court, simply were not significant. Therefore, the parties which consented to the entry of judgment via their endorsement of the consent decree have "no status to appeal." *Stanford v. Utley,* 341 F.2d 265, 271 (8th Cir. 1965). *See also Liddell IV,* slip op. at 5-6 (and citations therein).

Having so concluded, we turn to the Adams group's substantive challenges to the merits of the 12(b) plan.[17] Basically, the

---

[17]Various parties argue that the Adams group lacks standing to challenge the 12(b) plan. In light of the group's 1977 intervention and consistent participation in all phases of this litigation to date, we cannot agree.

Adams group contends that implementation of the 12(b) plan will not desegregate the predominantly black city vocational schools and the predominantly white SSD. They argue that rather than being concrete, the 12(b) plan is merely "a letter of intent to try to work out details at a later date." The Adams group asserts that the Metropolitan Coordinating Committee (MCC), which, under the 12(b) plan, would be created and given primary responsibility for enforcing the plan's desegregation requirements, would be actually answerable to no one and be a "toothless tiger" without any real power to effectuate constitutionally required desegregation of the metropolitan area vocational programs.

The Adams group cites numerical statistics which purportedly reveal that "white families who are desirous of obtaining vocational education for their children [would be encouraged] to move out of the City into the suburbs." They contend that the plan's natural result will be to resegregate the St. Louis metropolitan area and that fewer students will have the opportunity to obtain vocational training than are currently enrolled in such programs. Finally, the Adams group argues that the plans' contemplated yearly desegregation goals for vocational educational programs[18] will be impossible to achieve.

---

[18]The 12(b) plan establishes the following specific racial distribution goals: *Year One* (1981-1982) — 85% white and 15% black in Special District Technical Schools. *Year Two* (1982-1983) — (1) 82% white and 18% black in Special District Technical Schools; (2) initiate unduplicated programs at the city's O'Fallon Technical High School with a goal of 65% white and 35% black, but allowing a ten percentage point differential either way; (3) open the new West County Technical School and initiate unduplicated programs with racial goals of 65% white and 35% black, but allowing a ten percentage point differential either way; and (4) 10-15% white and 85-90% black at O'Fallon. *Year Three* (1983-1984) — (1) 78% white and 22% black in Special District Technical schools; (2) 50% white and 50% black at O'Fallon; (3) initiate three additional unduplicated programs with goals of 65% white and 35% black, but allowing a ten percentage point differential either way; and (4) 50% white and 50% black in

have consisted of St. Louis County, St. Charles County, Jefferson County, and the City of St. Louis. This regional district would have been subdivided into 16 local districts. Four of the 16 local school districts would have included parts of the City of St. Louis.

Implementation of the Spainhower Commission recommendations would have resulted in significant desegregation throughout the St. Louis metropolitan area. The State Education and School District Cross-Defendants did not support the Commission recommendations, and although the Missouri state legislature considered the Spainhower proposals in 1969, they were never approved. The rejection of the Spainhower report had the effect and/or purpose of perpetuating the vestiges of the dual system in place prior to 1954.

(b) From 1948 to 1979, during the period of time that the St. Louis County Board of Education was operating, several proposals were made to consolidate all school districts in St. Louis County. Such a consolidation would have had a significant desegregative effect within the County of St. Louis. It also could have helped to relieve the segregated conditions existing in the City of St. Louis. The St. Louis County Board of Education never approved such a county-wide consolidation. The St. Louis County Board's rejection of these proposals had the effect and/or purpose of promoting and maintaining segregation within the County and the City of St. Louis.

(c) State Education and School District Cross-Defendants rejected other proposed consolidations, including those involving University City and Clayton, with the effect and/or purpose of maintaining segregated conditions within St. Louis County and the City of St. Louis.

express terms of the 12(b) plan if the plan fails to effectively desegregate the metropolitan vocational technical schools by the end of the 1985-1986 school year.[21]

We do not find the Adams group's objections persuasive. First, we do not accept the contention that the 12(b) plan is an agreement to do nothing. The plan mandates a specific yearly progression of events which will result in a racial balance of sixty-five percent white and thirty-five percent black[22] at each of the vocational technical schools which will be operating by the 1985-1986 school year. These goals and the various provisions of the 12(b) plan satisfy constitutional standards. The MCC will have extensive responsibilities and authority in ensuring that the plan is implemented and its goals reached. For example, the MCC has the power to eliminate duplication of programs and may assign students to particular vocational technical schools.

Second, the district court's June 11, 1981, order and 12(b) plan contain various reporting and monitoring provisions. These provisions ensure that the anticipated progress will be made. In addition, the district court expressly retained jurisdiction over the vocational education issues and may take appropriate action at any time sua sponte or upon a motion of any party if implementation of the 12(b) plan does not bring about the anticipated results. Also, and as briefly noted earlier, paragraph sixteen of the 12(b) plan states that the district court,

---

[21]In addition, these considerations are distinct from a more fundamental reality: the broad remedial authority vested in the federal courts under the Supremacy Clause to eliminate proven consitutional violations committed by the state.

[22]The plan expressly allows for a ten-point percentage differential either way. While some flexibility is necessary in such planning, the 65% white/35% black goal is a realistic one and should be attained. *See also* n.18, *supra,* for a full description of the 12(b) plan's racial distribution goals.

after the 1985-1986 school year and upon a party's motion after a hearing, "may either order a complete merger of the vocational programs with a unified governing and taxing structure, modify this plan, or adopt any other plan * * * ."

Third, the parties having responsibilities under the 12(b) plan must exercise those responsibilities with the utmost good faith. The parties' negotiations which resulted in the consent decree and 12(b) plan are commendable. We trust that actual desegregation of the vocational education programs in the metropolitan area will be achieved with the same cooperative spirit.

(c) *The District Court's Paragraph 12(b) Funding Orders.*

In our December 2, 1981, order, we allowed the state to "argue whether the financial obligations imposed upon it with respect to the vocational education plan are inconsistent with our previous mandates." *Liddell IV,* slip op. at 6. The district court's finding that the state was constitutionally culpable for failing to disestablish the dual vocational education systems in the city and county[23] was affirmed by this Court and the United States Supreme Court denied the state's petition for writ of certiorari.[24] Under the law of the case doctrine, this finding of culpability must be followed in all subsequent district and appellate proceedings. *See, e.g., Continental Bank & Trust Co. v. American Bonding,* 630 F.2d 606, 608 (8th Cir. 1980); *Houghton v. McDonnell Douglas Corp.* 627 F.2d 858, 864 (8th Cir. 1980).

The district court's June 11, 1981, order provided that funds to meet the commitments of the state defendants to the 12(b)

---

[23] *Liddell v. Board of Education,* 491 F.Supp. 351, 358 (E.D. Mo. 1980).

[24] *Liddell II,* slip op. at 19. *See* n.1, *supra.*

approved plan shall be made available by the state defendants.[25] The court expressly recognized that significant start-up costs, outlays for building renovation and additional operating expenses would be necessary to establish vocational programs in ninth and tenth grades at regular comprehensive city high schools.[26] It noted that there were unspent funds earmarked for the 1980-1981 St. Louis Desegregation Budget which had been provided by the state and by the federal government via the Emrgency School Assistance Act (ESAA). Like its May 21, 1981, order, the court directed that one million dollars of the unspent state funds designated for St. Louis desegregation be placed in a separate account to be used for vocational education expenses. It again directed the city board to promptly apply to

---

[25]The district court actually considered vocational funding issues on four separate occasions. First, the district court signed a consent decree on May 21, 1981. H(132)81 (described *supra* at 16-17). Paragraph 6 of the decree provided that "[f]unds to meet the commitments of the State Defendants to the [12(b)] plan * " * shall be made available by the State Defendants and the Missouri General Assembly subject to and in compliance with any applicable provisions of law." Because the parties were unable to agree on how the plan would be funded, the district court entered a separate funding order on May 21, 1981. H(134)81. This second attempt to address funding issues was independently drafted by the district court and contained funding provisions that were substantially incorporated in the district court's third order, dated June 11, 1981. The district court entered the final vocational funding order that is relevant to our consideration on June 24, 1981, in response to the state defendants' motion to reconsider the previous funding orders. *See* text accompanying notes 29 & 30, *infra*.

[26]Under the parties' 12(b) plan, the vocational technical schools will offer vocational training only for grades eleven and twelve. As a result, vocational training presently offered for grades nine and ten at O'Fallon Technical High School would be eliminated and vocational programs for those grades would be merged into "comprehensive" high schools in the City of St. Louis. "Comprehensive" high schools are regular curriculum high schools not designated or operating specially as "vocational schools."

the United States Department of Education for permission to use previously designated ESAA funds to "fund costs for the development, equipment, renovation and operational costs for the City Board's vocational programs." The June 11, 1980, order also contained the following specific funding provisions:

> D. The Board of Education of the City of St. Louis shall reimburse the State [the one million dollars of state funds discussed above] * * * , spent to the extent that monies are available at the end of the 1981-82 school year from the City Board's Debt Retirement Fund which are not otherwise restricted by prior Court order or necessary for the retirement of the City Board's debt. If the City Board has no such funds, the State shall continue to pay such costs from the [one million dollar account previously discussed] * * * .
>
> E. If the above funds are still insufficient to develop, equip, renovate and cover increases in operational costs for these programs which result from compliance with the plan and this decree, then the remainder of the unspent State designated monies existing in the 1980-81 Desegregation Budget shall be utilized as necessary.
>
> 11. [sic] During the phase out of ninth and tenth grade students from O'Fallon Technical High School to comprehensive high schools in the City of St. Louis, the State funding allocated for such programs during the school year of phase out shall be paid to the Board of Education of the City of St. Louis for vocational education related matters. Said funding to the City Board shall continue each year thereafter.[27]

---

[27]The final sentence of paragraph 11 initially stated: "State defendants have agreed to this provision." On June 24, 1981, the district court deleted this sentence and added the following phrase: " * * * under the desegregation order or modifications thereof." *Liddell v. Board of Education,* No. 72-100C(4), slip op. at 3 (June 24, 1981) (H(207)81).

12. The Court recognizes that the Special School District has previously budgeted two million dollars ($2,000,000.00) [in new equipment] for equipping West County Technical High School which will open in Year Two of the 12b plan for consolidated vocational programs. Much of this equipment will be used at the discretion of the Metropolitan Coordinating Committee for unduplicated programs under the consolidated program plan.[28]

13. All costs concerning the implementation of the vocational programs shall be subject to review by this Court if any party disputes any of these costs as not being reasonable or necessary for the implementation of this order.

14. In the event that the Board of Education of the City of St. Louis is unable to fund the development, equipment, and/or renovation costs and to cover increases in operational costs for these programs which result from compliance with the plan and this decree from the above sources or with current desegregation budgeted revenues, the Board of Education of the City of St. Louis shall apply to the Court for such appropriate orders as may be necessary to secure additional funds essential for such purposes.

The district court also retained jurisdiction of the 12(b) aspects should further vocational-related orders—funding or otherwise—become necessary.

Finally, on June 24, 1981,[29] following a hearing held on June 23, 1981, the district court partially revised its June 11 order in

---

[28]The phrase "in new equipment" bracketed in the quotation above was added by the district court on June 24, 1981. *Liddell v. Board of Education,* No. 72-100C(4), slip op. at 4 (June 24, 1981 (H(207)81).

[29]H(207)81.

response to the state defendants' motion to "reconsider * * * [the district court's] funding order dated May 21, 1981." In the fourth order, the court considered the state defendants' objections to the May 21, 1981, order, harmonized the May 21, 1981, funding provisions with those in the June 11, 1981, order and made certain minor modifications to its June 11, 1981, funding provisions.[30]

After careful review of these four 12(b) vocational education funding orders, we hold that the district court did not abuse its discretion in entering the funding provisions of the various orders. This Court has previously held that the state committed an interdistrict constitutional violation by failing to dismantle the racially segregated separate vocational programs in the SSD and city school districts.[31] The state's contention that this previous determination is not an adjudication of interdistrict liability for the vocational aspects of this case is without merit. The district court may, therefore, impose 12(b) funding orders against the state.

In affirming the district court's 12(b) funding orders, we note that the state had ample opportunity to contest the need for and reasonableness of the contemplated vocational costs.[32] In the future, it should participate fully in the budgetary process involving the vocational programs.

---

[30]*See* notes 27 & 28, *supra.*

[31]The Missouri State Board of Education simply could have designated the SSD as the AVS for the entire St. Louis metropolitan area by adding the city school district to the SSD's vocational service area.

[32]At oral argument, counsel for the Adams group contended that the average cost of the 12(b) plan per student will be $60,000, compared to pre-plan cost of $2,800 per student. This argument ignores the fact that a portion of the city board's proposed 1981-1982 vocational budget ($1,394,840 out of a total proposed vocational budget of

(3) (a) *Joinder of Suburban Districts and County Units of Government.*

On August 24, 1981, in H(337)81, the district court added eighteen St. Louis County suburban school districts and three St. Louis County governmental officials as parties defendant to this litigation.[33] The district court also stayed various motions to add several other suburban school districts and other entities as parties defendant. Finally, the district court ordered the state defendants and city board to develop and submit a suggested plan of interdistrict school desegregation pursuant to paragraph 12(c).[34]

Several parties appealed from H(337)81 and, in response, others filed motions to dismiss those appeals for lack of appellate jurisdiction. On December 2, 1981, we concluded the validity and scope of paragraph 12(c) and may be reargued but we expressly reserved ruling on the jurisdictional questions concerning the appeals from H(337)81. *Liddell IV,* slip op. at 7-8.

$2,400,147) would be spent for capital outlay. It seems apparent that many of the capital expenditures would pay for the phase out of ninth and tenth grade vocational training at O'Fallon Technical High School and the implementation of vocational training for those two grades at the city's comprehensive high schools. Obviously, many "start up" costs would require a single capital outlay which would not be required in subsequent years. In any event, the district court will consider the Adams group's per-student cost claim when it considers the city board's proposed 1981-1982 vocational budget.

[33]The Pattonville School District was added as a party defendant in H(337)81 but later agreed to participate in the paragraph 12(a) voluntary interdistrict pupil transfer plan. As a result, the district court subsequently stayed motions seeking to join Pattonville as a party defendant in the interdistrict liability proceedings.

[34]Paragraph 12(c) is fully discussed in Part (3) (b).

We now hold that we lack jurisdiction to entertain the appeals from H(337)81. The portions of the district court's order which added additional party defendants are not appealable. *Liddell IV* at 5n.6 (and citation therein). The portions of H(337)81 which stayed certain proceedings pending before the district court—for example, the motions to add additional entities as party defendants—are also not appealable. *Id.* at 13 (and citation therein).

Many newly joined defendants argue that the interdistrict liability issues should be tried as an entirely separate lawsuit, claiming in part that beginning a new record is preferable to utilizing and adding to the large record already accumulated in this litigation. Similarly, the state, in arguing that the interdistrict isues should be tried separately, contends that joinder of so many more defendants to the original lawsuit will not foster judicial economy.

In contrast, the city board, which was recently aligned as a plaintiff in the interdistrict proceedings, asserts that the interdistrict liability issues would best be tried in a single lawsuit. All the plaintiffs in the interdistrict liablity phase, however, claimed at oral argument that they only wanted an opportunity to prove an interdistrict case against the defendants.

We must again stress that many orders entered by the district court are nothing more than matters of case management. The district court must manage this difficult litigation on a day-to-day basis and the parties must not file "premature and piecemeal interlocutory appeals which have no jurisdictional basis." *Liddell IV,* slip op. at 14. Although we lack jurisdiction to consider the challenges to H(337)81, we trust that part (3) (b) of this opinion will alleviate some of the recurring concern of the parties relating to interdistrict matters.

(3) (b) *The 12(c) Proceedings and Interdistrict Relief.*

Considerable controversy has arisen over the proper construction of paragraph 12(c) of Judge Meredith's order of May 21,

1980. This order was approved by this Court as originally entered[35] and as subsequently amended.[36] The amended paragraph 12(c) order reads in pertinent part as follows:

> [T]he State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of interdistrict school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignments and administrative reorganization provisions.

Pursuant to this paragraph, four comprehensive plans for integrating the St. Louis schools and various suburban schools have been filed with the district court. Several appellants, especially the St. Louis County schools, governmental units and officials who have been joined as defendants, contend that the district court intends to implement these plans without first affording the suburban schools or governmental units that would be affected an opportunity to be heard and without first making findings of interdistrict liability. They base this view on a series of eight orders issued by the district court, and particularly two

---

[35] *Liddell II*, slip op. at 19-20.

[36] *Liddell III*, slip op. at 13-17.

orders issued on September 24, 1981.[37] In those two September 24, 1981, orders, the district court used some language indicating it would "enforce a metropolitan desegregation remedy against the State and St. Louis County school districts as state instrumentalities."[38]

The state defendants contend that because all of the plans for integrating city and county schools would substantially affect the defendant county districts by consolidation of districts, realignment of school boundaries, or pairing of school districts, they cannot be ordered to implement such a remedy until and unless the county schools have been heard and a determination has been made that they have contributed to the segregation of city and county schools. They also argue that further hearings are required to establish whether they can be required to take any actions in addition to those they have already been required to take with respect to the city schools.

---

[37]H(336)81; H(337)81; ruling on motion H(341)81; rulings on motions H(409)81 and H(410)81; H(476)81; H(493)81; and H(494)81.

The orders designated as H(493)81 and H(494)81 were issued on September 24, 1981.

[38]We do not reach the state's recurring argument that it cannot merge independent school districts because it lacks real control over those districts. This lack of control, argues the state, supports its view that local school districts are not its "instrumentalities." In support of this argument, the state places primary reliance on *England v. Eckley,* 330 S.W.2d 738 (Mo. 1959) (en banc); *State v. Holmes,* 231 S.W.2d 185 (Mo. 1950) (en banc); and Mo. Const. art. III, § 40.

Regardless of whether the state's arguments have any validity, both Judge Meredith and this Court assured the suburban school districts that they would be given an opportunity to be heard before any imposition of a mandatory interdistrict desegregation remedy. We honor those assurances. Many suburban school districts are now party defendants in this litigation and the interdistrict liability issues will be determined after a full liability hearing. The district court may, if it deems necessary, reach the state's "instrumentality" arguments in the interdistrict liability proceedings. We need not at this time address the merits of the interdistrict proposals before the district court.

The Liddell appellants, on the other hand, assert that the State of Missouri has the ultimate and exclusive responsibility for public education in the state and that, inasmuch as it has been found to be a constitutional wrongdoer in segregating the public schools of the City of St. Louis, it can be required to realign city and county school boundaries and to require consolidation of these schools to further desegregation of both city and county schools without further hearings to determine the liability of the county school districts.

The Adams group, representing white parents and students of South St. Louis, also contend that the district court can order the State of Missouri to realign boundaries between city and county schools and to order consolidation of city and county schools if necessary to effectuate desegregation of the city schools. They, too, assert that it can take these actions without additional hearings or liability findings and cite as support *Morrilton School District v. United States,* 606 F.2d 222 (8th Cir. 1979) (en banc), *cert. denied,* 444 U.S. 1071 (1980; *Evans v. Buchanan,* 582 F.2d 750 (3rd Cir. 1978) (en banc), *cert. denied,* 446 U.S. 923 (1980); *United States v. Board of School Commissioners,* 573 F.2d 400 (7th Cir. 1978).

The City of St. Louis takes the position that the district court orders are not reviewable under 28 U.S.C. §§ 1291 or 1292. It asserts that the appeals before the court in this category are "little more than invitations to this Court to issue a declaratory or advisory opinion concerning the interdistrict aspects, if any, of the case below." They urge us to reject the parties' invitation to use 28 U.S.C. § 1651 as a vehicle to control interlocutory decisions of the district court and subvert the express federal policy against piecemeal litigation.

There is a great deal of merit to the arguments advanced by the City of St. Louis. The district court has yet to issue an order that impacts any of the county schools or units of government. Thus, we are being asked not to rule on a specific plan but to an-

ticipate what the district court may have in mind and to instruct it as to what it can or cannot do. The most that can be said is that the district court has indicated in one or more of its orders that it may take actions which impact significantly on St. Louis County school districts. While the city board is not opposed to such action as a matter of principle, it fears that either this Court or the United States Supreme Court will find that the action taken is inconsistent with the Supreme Court's decision in *Milliken v. Bradley*, 418 U.S. 717 (1974), and that as a result, meaningful interdistrict relief will be delayed for years.

The State of Missouri and the county defendants, on the other hand, are opposed to interdistrict relief as a matter of principle. They assert that they have not been found to have contributed to the segregation of either city or county schools and that unless and until they have been found to have done so after a hearing in which they have had an opportunity to participate, no orders requiring them to take any action with respect to integrating either city or county schools can be taken.

We have no desire to interject ourselves into the management and direction of this case by the district court. That is not our responsibility. We have no wish to take any action which will encourage constant interlocutory appeals, and we do not intend to issue advisory opinions whenever one or more of the parties feels that the district court is about to take a step with which they disagree. We, therefore, hold that we are without jurisdiction to consider the various appeals from the district court's severance order. *See* 9 Moore's Federal Practice ¶ 110.13[8], p. 183 (1980).

In light of the fact that our earlier opinions with respect to paragraph 12(c) may have led to some confusion, we will, however, restate the position of this Court. We do so in order that the process in integrating the St. Louis city schools can continue without interruption and so that the plaintiffs below can obtain a prompt determination of their claim that an interdistrict remedy is appropriate here.

Four major plans now have been submitted. Three of them are broad in scope and would, in essence, establish a single integrated school district consisting of the present city district and a number of suburban districts, the number depending on the particular plan. The new district would be divided into areas for administrative purposes, with students assigned and transported where necessary to achieve a thoroughly integrated school system. The state's plan is essentially one calling for cooperation between school districts.

It is clear from our earlier orders that the broadly based plans cannot be implemented in the context of the present 12(c) proceedings.

It is equally clear, however, that the district court can require existing defendants—the state and the city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict

Paragraph 12(c) permitted the district court to require the defendants who have been adjudged to be constitutional wrongdoers—the state defendants and the city board—to prepare and submit feasibility plans for interdistrict desegregation involving city and suburban schools in a way that will provide complete and lasting school desegregation.

transfer.[39] Such relief would not materially affect parties that have not been found constitutionally liable and, hence, would be permissible under paragraph 12(c).

There is thus no sound reason why the 12(c) hearings should not go forward promptly and why the district court should not determine what actions it can require the state or the city board to take which may involve the suburban schools.

The record also reveals other innovative ideas and techniques that the district court may consider. Their feasibility and cost can be explored in the evidentiary hearings which have already been scheduled and which can be completed promptly. Many of these ideas and techniques require cooperation by the suburban schools, others do not. To the extent that suburban schools are willing to cooperate, the plans requiring their participation can now go forward. To the extent that they are unwilling to do so, the 12(c) plans must be tailored to be effective without their mandated participation. We emphasize that suburban schools that voluntarily participate will not by such participation admit liability or waive any right that they may presently have to be excluded from a plan of mandatory interdistrict desegregation.

In the interests of judicial economy, we suggest that the interdistrict liability proceedings previously severed from the remainder of the case be postponed until after the district court has entered an order in the pending 12(c) proceeding. The interdistrict liability aspect should then proceed promptly thereafter.

(4) *Recusal.*

On September 24, 1981,[40] Judge Hungate denied several motions by county schools and other county defendants to dis-

---

[39]These possible remedies are given as examples only. They are not intended to represent an exhaustive list. The district court may adopt other remedies that are appropriate.

[40]H(494)81.

qualify himself from presiding in this case. Specifically, he declined to recuse himself "as to proceedings related to the original lawsuit, including the implementation of remedial plans pursuant to paragraphs 12(a)-(d) * * * ." He did, however, recuse himself "as to the claims of interdistrict constitutional violations" which were presented in various pleadings filed by leave of the district court. In making these rulings, he specifically held that the moving parties' affidavits,[41] which alleged that he had predetermined the interdistrict liability issues, were "clearly insufficient" to warrant recusal under 28 U.S.C. §§ 144 and 455. Nevertheless, he recused himself "from deterimination of the alleged constitutional violations by the county school districts as individual entities" so that "disposition of this complex litigation may proceed in an atmosphere of calm reflection."

Several parties appealed from this partial recusal order and, in response, others filed motions to dismiss those appeals for lack of appellate jurisdiction. On December 2, 1981, we concluded that the various appeals from H(494)81 "arguably" fell within our appellate jurisdiction and allowed them to proceed with a specific reservation of the jurisdictional issues until after briefing and oral argument. *Liddell IV,* slip op. at 9 & 9 n.12. We now hold that we lack jurisdiction to entertain the appeals from the H(494)81 order.

A distict judge's determination "*not* to disqualify himself is reviewable by appeal only from a final judgment in the cause in

---

[41]The following parties filed separate motions, along with various pleadings, memoranda and affidavits, to disqualify Judge Hungate: (1) St. Louis County and its individually named officials; (2) Riverview Gardens School District; (3) Mehlville School District; (4) Affton School District; (5) Maplewood-Richmond Heights School District; (6) Jennings School District; (7) Brentwood School District; (8) Bayless School District; (9) Hancock Place School District; (10) Lindbergh School District; (11) Ladue School District; (13) [sic] Rockwood School District; and (14) Webster Groves School District.

which the motion for disqualification was filed." *Scarrella v. Midwest Federal Savings and Loan,* 536 F.2d 1207, 1210 (8th Cir.) (per curiam), *cert. denied,* 429 U.S. 885 (1976) (emphasis added). Such a determination, however, is reviewable by a petition for a writ of mandamus and we may, as we choose to do so here, treat an allegation on appeal as such a petition.

We turn then to the question of whether we should issue a writ of mandamus to require Judge Hungate to disqualify himself. In *Pfizer, Inc. v. Lord,* 456 F.2d 532 (8th Cir.), *cert. denied,* 406 U.S. 976 (1972), we held that mandamus may be utilized to review a district judge's refusal to recuse himself. We also reviewed the standards for recusal. *Id.* at 537. In *United States v. Poludniak,* 657 F.2d 948 (8th Cir. 1981), we again reviewed the standards for recusal, this time in the light of 28 U.S.C. § 455(a) as amended in 1974, which provides: "Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

On the basis of a careful review of the record, we find no basis to direct Judge Hungate to recuse himself from the original proceedings. The substance of the movants' claims is that Judge Hungate decided in advance of any evidentiary hearings that the county schools and county defendants would be required to participate in a mandatory interdistrict plan for desegregating the county and city schools. They essentially base this allegation on two statements made by the judge and two orders issued by him.

On April 1, 1981, Judge Hungate stated:

> If I may, in an aside, talk about the different sections we have—12(a)'s, 12(b)'s, 12(c)'s; we have voluntary or mandatory:
>
> In World War II, WWII, the big one, you could volunteer. Some of us had that opportunity. You could

> volunteer to go to the Air Force. If you volunteered, they would put you there. You could volunteer for the National Guard. You could volunteer for the Navy. Some of us didn't do that. Later we were drafted, and we were placed in the infantry. You'd be surprised at what great interest the sergeant would have in what you would then like to volunteer for. Now the reception was not too good at that time. I hope that's helpful.

On May 20, 1981, he reportedly stated in substance:

> We all have bosses and the Eighth Circuit is mine. I have to do what they say and if enough people do not participate with [sic, in] the voluntary plan, I will have to enter a mandatory plan.

On August 24, 1981, Judge Hungate issued an order H(337)81 which read in part as follows:

> In light of the overwhelming rejection of the 12(a) voluntary plan, the Court is compelled to begin proceedings on a mandatory inter-district plan pursuant to paragraph 12(c) * * * , On February 13, 1981, the United States Court of Appeals for the Eighth Circuit affirmed this Court's power to order a mandatory inter-district remedy.
>
> * * * *
>
> [T]he State defendants * * * and the St. Louis Board of Education are ordered and directed as follows:
>
> To develop and submit to the Court by February 1, 1982, a suggested plan on inter-district school desegregation necessary to *eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.* [Emphasis added.]

On August 25, 1981, he issued another order (H(340)81) which directed the court-appointed experts:

> To provide expert assistance to this Court in developing *and implementing* a mandatory, interdistrict desegregation remedy pursuant to paragraph 12(c) of Judge Meredith's order dated May 21, 1980, as amended, and as affirmed by the United States Court of Appeals for the Eighth Circuit. [Emphasis added.]

He further ordered as follows:

> IT IS HEREBY ORDERED that the educational experts appointed by the Court on August 1, 1981, H(285)81, be and they are directed to begin assembling data necessary for devising *a mandatory interdistrict remedy pursuant to paragraph 12(c) for presentation to the parties for implementation in the 1982-83 school year.* IT IS HEREBY FURTHER ORDERED that on or before September 7, 1981, the experts shall file a proposed timetable for outlining the broad parameters of a 12(c) mandatory interdistrict plan. The framework shall be submitted to the Court before the expiration of their 90-day appointment, November 16, 1981. [Emphasis added.]

Certainly the orders cannot serve as a basis for recusal. Judge Hungate was complying with paragraph 12(c) of Judge Meredith's order which has been approved by this Court. The Supreme Court declined to review our decision approving paragraph 12(c). Even if it is assumed that Judge Hungate was reading more into 12(c) than either Judge Meredith or this Court intended, such a reading does not indicate any prejudice on Judge Hungate's part and is not grounds for recusal.

Nor can the oral statements made during the course of the 12(a) proceedings serve as a basis for recusal. At most, they indicate a view on his part that if a successful voluntary plan could not be put together, he would be required to enter a mandatory plan at some date in the future: whether before or after an evidentiary hearing for the affected suburban schools is not

clear. In sum, the orders and statements do not indicate any personal prejudice on his part but, instead, are simply an expression of what he considered his duty to be. *See, e.g., Cleveland v. Krupansky,* 619 F.2d 576, 578-579 (6th Cir.) (per curiam), *cert. denied,* 449 U.S. 834 (1980; *In re International Business Machines Corp.,* 618 F.2d 923, 927-932 (2d Cir. 1980); *Davis v. Board of School Commissioners,* 517 F.2d 1044, 1049-1052 (5th Cir. 1975), *cert. denied,* 425 U.S. 944 (1976); *United States v. Anderson,* 433 F.2d 856, 860 (8th Cir. 1970). For all these reasons, we decline to issue a writ of mandamus to overrule Judge Hungate's refusal to disqualify himself from the original proceedings.

In addition, we hold that we lack jurisdiction to entertain challenges to that portion of H(494)81 in which the district judge recused himself as to the interdistrict liability issues of the case.[42] *See Hampton v. Chicago,* 643 F.2d 478 (7th Cir. 1981) (per curiam) (a district court's order granting a motion to recuse is neither appealable nor subject to mandamus review because a litigant does not have a cognizable interest in having a particular judge sit in his case).

This is a very difficult case and emotions run high. The issues involved here, unfortunately, have been politicized by some public officials and candidates for public office. Every determination entered by the presiding judge has been, and will continue to be, seized upon by someone to advance his own interest. Thus, prudence, caution, and fairness is necessary. We are confident that Judge Hungate has these qualities and that his only aim is to see that the constitutional rights of those af-

---

[42]As noted more specifically above, the district judge recused himself from considering the interdistrict liability issues concerning the county suburban school districts. The recusal order presumably is equally applicable to the potential interdistrict liability of the original defendants and the other newly added defendants in this litigation.

fected are vindicated. Chief Judge Wangelin may, if he chooses to do so, reappoint Judge Hungate to preside in the interdistrict liability phase if Judge Hungate would be willing to reassume exclusive control over this complicated case.

CONCLUSION

We once again remand this cause to the district court for further proceedings consistent with this opinion.

The Special School District of St. Louis County and the State of Missouri shall equally bear all costs relating to the appeals which raised issues relating to vocational education. With this exception, each party to these appeals shall bear its own costs.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 80-1458, 1494, 1531, and 1599

Craton Liddell, et al.,

Appellants,

v.

Board of Education of the City of St. Louis, et al.,

Appellees.

Submitted: November 13, 1980

Filed: February 13, 1981

Before HEANEY, BRIGHT and STEPHENSON,
Circuit Judges.

HEANEY, Circuit Judge.

We are asked by the State of Missouri and by three groups of parents to set aside the plan of the United States District Court for the Eastern District of Missouri for integrating the public schools of St. Louis. The State argues that it has been required to pay too much toward the integration plan and that it should not be ordered to participate in developing either a voluntary or an involuntary inter-district integration program. The white parent group complains that the district court plan goes too far and is unfair to white students. The black parent groups assert that the plan doesn't go far enough in that it leaves some schools in North St. Louis all black. All of the appellants assert that the district court erred in failing to find that the United States contributed to the segregation of the St. Louis school district and to require it to pay a substantial portion of the cost of integrating the school system.

We affirm the decision of the district court. The desegregation plan was designed in accordance with the letter and spirit of the mandate of this Court and it meets constitutional requirements. If the plan is fully implemented in the same spirit and with the continuing cooperation of parents, students, teachers and community and religious leaders, a firm foundation will have been laid for affording the children of St. Louis a quality education in a racially netural school system.

We take judicial notice of the fact that Board of Education and one of the parent groups have filed amended complaints in the district court, asking the court to require inter-district integration with the schools of St. Louis, St. Charles and Jefferson Counties. We express no opinion as to the merits of the proposed amendments. We do, however, emphasize that the pendency of these petitions must not be permitted to delay the full and complete implementation of every feature of the plan developed by the district court and approved by this Court, including those sections of the plan that relate to inter-district integration.

I

This case, filed in district court in 1972, is before this Court for the third time.[1] When it was first here, we remanded it with directions to permit the Caldwell parent group to intervene as plaintiffs. *See Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977). When it was next here, we reversed the district court, concluding that the plaintiffs had clearly proven that the defendants had established and maintained a racially segregated school system in violation of the plaintiffs' constitutional rights. *See Adams v. United States,* 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied,* 101 S.Ct. 88, 66 L.Ed.2d 29 (1980). We remanded the case to the district court with the following admonition:

---

[1]For a detailed account of the procedural history of this case, *see Adams v. United States,* 620 F.2d 1277, 1281-1284 (8th Cir.) (en banc), *cert. denied,* 101 S.Ct. 88, 66 L.Ed.2d 29 (1980).

> Segregation in the elementary and secondary schools in St. Louis must now be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

Id. at 1291-1292.

Only one party—the Adams plaintiffs—asked the Supreme Court to review our decision; the Court denied the petition for certiorari.

On remand, the district court made every effort to comply with our charge. It established an interracial citizen's advisory committee to promote community involvement in the proceedings; it appointed Dr. Gary Allen Orfield to provide expert assistance in the preparation of a desegregation plan; it held extensive evidentiary hearings on proposed plans and the procedures involved in implementing them; and after a careful consideration of all the evidence, it approved a comprehensive desegregation plan to be effective at the start of the 1980-1981 school year. *See Liddell v. Board of Educ.*, 491 F.Supp. 351 (E.D. Mo. 1980).

II

The plan approved by the district court is a modified form of the "Orfield approach" sanctioned by this Court in the previous appeal. *See Adams v. United States, supra,* 620 F.2d at 1293-1296. The essential elements of the plan include (1) reassigning students to achieve the greatest possible number of desegregated schools (defined as 30-50% black); (2) establishing magnet and alternative schools designed to attract students of all races from throughout the St. Louis area; (3) organizing a

middle school system to facilitate clustering, pairing and other integrative efforts; (4) instituting and expanding specialty and part-time integrated programs; (5) facilitating permissive integrative transfers; (6) initiating cooperative inter-district desegregation programs; (7) providing for integration of and special training for school personnel; and (8) developing a comprehensive community relations program.

Although the plan reflects the fact that it is not possible to fully integrate every school in the St. Louis system, the district court faithfully followed the directions of this Court by providing a variety of integrative experiences and enhanced educational opportunities for students remaining in the predominately black schools.

The district court estimated that the overall cost of the desegregation plan would be approximately $22.1 million. The court directed the State of Missouri to pay one-half of the actual cost of desegregation. To finance the remaining 50%, the court ordered the Board of Education to transfer approximately $4.7 million out of its debt retirement account, noting that federal funds would cover the balance. Federal funding to assist in the integration process exceeded $7 million for the 1980-1981 school year.

III

Four parties—the Liddell plaintiffs, the Caldwell plaintiffs, the Adams plaintiffs, and the State of Missouri defendants[2]—appeal from the district court's order approving the desegregation plan. For convenience, the issues on appeal may be divided into two categories: those relating to the design of the plan and those relating to the financing of the plan. We first consider the challenges to the design of the plan.

---

[2]The "State defendants" include the State of Missouri and its Board of Education, as well as the following Missouri officials: the Governor, the Attorney General, the Treasurer, the Commissioner of Education, the Commissioner of Administration, and the individual members of the Missouri Board of Education. Because their interests are identical and they have filed a joint brief, we refer to these parties collectively as the State of Missouri.

A. *Design*

1. The Liddell and Caldwell plaintiffs contend that the plan approved by the district court is constitutionally deficient because it does not go far enough to remedy the effects of the defendants' discriminatory practices. Specifically, they argue that the district court erred in holding that schools with 30-50% black enrollments were to be considered integrated. Their position appears to be that the only constitutionally permissible means of integrating the St. Louis system was to reassign students so that each school had the same racial mix as the district as a whole—approximatley 76% black and 24% white.

We cannot agree that the options available to the district court were so limited. In our decision of March 3, 1980, we specifically stated that a plan similar to the one adopted by the district court would meet constitutional requirements. In so doing, we accepted the testimony of Dr. Orfield that such a plan would have the best chance of successfully integrating the St. Louis schools and stabilizing neighborhoods already integrated.

In affirming this aspect of the plan, we emphasize that students remaining in the predominately black schools in St. Louis are not left completely untouched by the new system. Provisions affecting the remaining black schools include magnet and alternative programs, new and expanded specialty programs, permissive intra-district transfers, staff desegregation, staff development, a City/County integrated vocational program, and voluntary pupil exchanges with suburban school districts. We also emphasize that the plan requires the Board of Education to spend a substantial portion of the $22 million desegregation budget to improve the quality of education in those schools that remain all black and continuing expenditures are required for this purpose. Moreover, although a number of all-black or virtually all-black schools remain in St. Louis under the plan, the new system does eliminate the all-white schools from the district. Thus, although the degree of actual integration achieved under the plan is not optimal, we reiterate our

view that under all the circumstances, the plan is a constitutional one and has a better chance of providing a quality integrated education for the school children of St. Louis than any of the other plans that were presented by the parties to his lawsuit.[3]

2. In contrast with the position of the Liddell and Caldwell plaintiffs, the Adams plaintiffs argue that the district court has gone too far in the intra-district pupil reassignment portion of its plan.[4] They note that the Court has included in the reassignment plan a number of schools that were between 30 and 50% black prior to desegregation. These schools, they contend, should not have been required to participate in the plan in view of this Court's determination that the boundary lines and assignment patterns for schools with 30-50% black enrollments should remain substantially changed (sic).

This contention is without merit. Although reassignment does affect some schools that had a pre-plan enrollment of 30-50% black, we are satisfied that their inclusion does not violate our order of March 3, 1980. First, it turned out to be necessary to include some of these schools to accommodate the change from a two-tier (kindergarten-8; 9-12) to a three-tier (kindergarten-5; 6-8; 9-12) system, a change that was designed to help facilitate clustering and other integrative efforts and to improve the

---

[3]We note that the plan approved by the district court appears to permit up to a 15% deviation from the 30-50% black guideline used to define integrated schools. In our view, a deviation of this magnitude should be permitted only rarely and then only after the court has determined, following a hearing in which the parties are given an opportunity to present their views, that allowing the variance will not impair the overall effectiveness of the desegregation plan.

[4]The Adams group also claims that the Board of Education relied on false enrollment and other data in developing the plan. Although there may be minor discrepancies in some of the figures, we find no support in the record for the appellants' position that the information relied upon was so inaccurate that the plan must be invalidated.

overall educational opportunities in St. Louis. Second, it appears from the record that many of the schools cited by the appellant as having a pre-plan black population of between 30 and 50% had such a racial mix because students were transported to them, not because the neighborhoods surrounding the schools were integrated. Still other schools were included because their black enrollment percentage has increased rapidly in recent years, indicating that their black population would be likely to exceed 50% in the near future. When read in context, it is clear that our decision of March 3 was intended to minimize the transportation of students and to encourage the development and maintenance of integrated schools in integrated neighborhoods. In our view, the plan approved by the district court is faithful to this concept.

3. The State of Missouri is the sole challenger to paragraph 12 of the district court's order, which provides for various forms of inter-district relief. The State argues that the district court is without authority to order the preparation of any inter-district plan unless and until the suburban districts are joined as parties to the lawsuit. The Adams group, by contrast, argues that the court erred in not developing a more comprehensive inter-district remedy.

Paragraph 12 of the district court's order provides in part:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> > a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

491 F.Supp. at 353.

The appellees contend that this Court should not hear the States's challenge at this time because the directives contained in paragraph 12 are neither final judgments appealable under 28 U.S.C. § 1291 nor orders granting or denying injunctive relief appealable under 28 U.S.C. § 1292. Although the line between appealable and nonappealable orders is rarely clear in a case in which the district court retains jurisdiction over a developing desegregation plan, we are persuaded that we have jurisdiction over these issues in this appeal.[5] Accordingly, we consider the challenge to paragraph 12 on the merits, examining each section of the paragraph separately.

---

[5]In support of their position that the provisions of paragraph 12 are nonappealable, the appellees cite to cases in which appeals courts ruled that orders directing school boards to formulate desegregation plans were nonappealable. *See Bradley v. Milliken,* 468 F.2d 902 (6th Cir.), *cert. denied,* 409 U.S. 844 (1972); *Taylor v. Board of Educ.,* 288 F.2d 600 (2nd Cir. 1961). The State of Missouri distinguishes the cases cited by the appellees by noting that the school board in each of these cases was ordered to prepare a remedy consistent with its judicially determined constitutional liability. Here, the State argues, the district court exceeded its jurisdiction by ordering the parties to prepare a plan involving other school districts, even though it is conceded that the

Section (a) of paragraph 12 directs the parties to "make every feasible effort" to work out a voluntary plan of inter-district pupil exchanges to be implemented in the 1980-1981 school year. Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up. Under the terms of the order, the plan is to be designed to "assist in alleviating the school segregation in the City of St. Louis [and to ensure] that inter-district pupil transfers will not impair the desegregation of the St. Louis school district," 491 F.Supp. at 353. Thus, the voluntary exchanges contemplated by section (a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City.

Section (b) of paragraph 12 is also consistent with the district court's responsiblity to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." 491 F.Supp. at 358. Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit. We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year.

Section (c) of paragraph 12 is also within the authority of the district court. By its terms, that section required the parties to develop and submit to the court by November 15, 1980, a "suggested" inter-district plan "to eradicate the remaining vestiges of government-imposed school segregation in the City of St.

---

suburban districts cannot be considered to be constitutional violators unless and until they are joined as parties to the litigation. While the question is not free from doubt, we are satisfied that we have jurisdiction to hear an appeal from a remedial order that, on its fact, arguably involves potential parties who have not yet had their day in court.

Louis and St. Louis County." We must read the term "government-imposed" to mean "found to be government-imposed by a court." Therefore, to the extent that the segregation was imposed by County school districts which are not parties to the lawsuit and which have not been designated as constitutional violators, it cannot be considered to be "government-imposed." But, to the extent any such segregation was imposed by the State or other defendants, and to the extent those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so.

Furthermore, we recognize that the Board of Education and the Caldwell plaintiffs have petitioned the district court to amend their complaints to add as parties defendant the school districts in the three-county area surrounding the City of St. Louis. We express no opinion on the merits of those motions, but we emphasize that the current parties have a responsibility to comply with the terms of the district court order, including the provisions of paragraph 12, regardless of the disposition of the motions pending before the district court.[6]

4. The Adams and the Liddell plaintiffs maintain that the district court erred in approving the personnel assignment portion of the desegregation plan. Both appellants oppose the court's adoption of a "Singleton" plan of personnel assignment, which provides that the black to white staff ratio in each school is to be substantially equal to the district-wide black to white staff ratio. They argue that the Singleton formula is in-

---

[6]We note that the district court has found it necessary to extend the deadlines for filing the proposed plans under paragraph 12(a)-(c) and that it is apparently having some difficulty in getting complete and adequate proposals from the parties. We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop and implement the plans contemplated by paragraph 12. It is imperative that the district court countenance no excuse for further delay.

consistent with the following directive of this Court: "The consent decree, insofar as it pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated." *Adams v. United States, supra,* 620 F.2d at 1297. In our view, the plan approved by the district court goes beyond what we required, at least with respect to classroom teachers. We will not quarrel with that decision.

The Liddell and Adams groups argue that the personnel integration provision of the plan is inadequate because it fails to integrate the administrative staff. The district court's order provided that a Singleton assignment formula should apply to "[a]ll principals, teachers, and other certified staff who work directly with children at a school." 491 F.2d at 354. The court also stated, "The same criteria shall apply to non-certificated personnel." *Id.* We read these statement to provide that the Singleton assignment scheme is to apply to *all* principals, *all* teachers and *all* non-certificated personnel, as well as to certificated staff members who work directly with children. It appears that nothing is said about administrators other than principals. That is not surprising, inasmuch as the Singleton approach matches district-wide race ratios with staff ratios at each school. There is no way, therefore, to apply that formula directly to administrators who are not assigned to specific schools. We assume that as to such personnel, the prior directive of this Court will be followed, and are confident that if that phase of the plan has not yet been implemented, it will be by the opening of the 1981-1982 school year.

5. The Adams and Liddell plaintiffs also join in challenging the manner in which the burdens of desegregation are distributed among the students. The Adams group contends that the burdens are borne disproportionately by the white students, while the Liddell group asserts that the black students suffer the greatest adverse effects under the plan.

We find no support in the record for either of these positions. The Adams appellants base their argument on the fact that slightly over one-half of the students transported to schools out of their neighborhoods are white even though white students comprise only 24% of the school population. In our view, that is not sufficient to show that the white students bear a disporportionate burden. In a situation such as that in St. Louis, where it is necessary to exchange black students with white students in order to integrate the schools, the number of whites who are transported will almost necessarily be approximately equal to the number of blacks who are similarly transported. Under these circumstances, the percentage of each race transported is not controlling.

The Adams group also argues that the black students reap a disporportionate amount of benefits from the plan. That assertion simply has no support in the record.

The basis of the Liddell group's challenge is essentially that some black children remain in predominately black schools under the plan.[7] We have answered that complaint earlier in this opinion.

6. The Caldwell group raises two issues concerning the composition and operation of the citizens' committees appointed by the district court. In our March 3 opinion, we stated,

> The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system. In fulfilling

---

[7]The Liddell plaintiffs also assert that the district court violated this Court's mandate by failing to establish an educational park in the City of St. Louis. In our March 3 opinion, we did refer to an educational park as one possible method of providing enhanced educational opportunities for St. Louis students. We did not, however, require the district court to establish such a park.

> this responsibility, the Board shall work with the parties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court.

Adams v. United States, supra, 620 F.2d at 1295 (footnote omitted).

In accordance with this directive, the district court appointed a twenty-member bi-racial "Citizens' Committee" to assist the Board of Education in developing the desegregation plan. The members of the Citizens' Committee were chosen from lists provided by the parties; four of the twenty members were selected from the list submitted by the Caldwell plaintiffs. Following approval of the plan, the court disbanded the Citizens' Committee and adopted a new "Desegregation Monitoring and Advisory Committee." The new group was composed of twelve members, one-half of whom were members of the original Citizens' Committee.

The Caldwell plaintiffs assert that they are not adequately represented on this new committee. The record shows, however, that two of the twelve Monitoring Committee members, including the vice chairperson, were originally nominated for the Citizens' Committee by the Caldwell group. It also shows that six of the twelve members on the Monitoring Committee are black. In light of these facts, no abuse of discretion has been demonstrated.

The Caldwell appellants' second objection to the Monitoring Committee is that the district court erred in expressly authorizing *ex parte,* oral communication between the court and the Monitoring Committee chairperson and vice chairperson. We agree that all parties are entitled to know of the advice given the court by the Committee. *See Bradley v. Milliken,* 620 F.2d 1143, 1156-1158 (6th Cir.), *cert. denied,* 101 S.Ct. 207, 66 L.Ed.2d 80 (1980). The best practice would be to reduce to writing all com-

munications between the court and the Committee, make them part of the record, and provide them to counsel for the parties. If oral contact is deemed necessary by the district court, the parties should, where possible, be given notice and opportunity to be present when the oral report is received. To this point, however, no prejudice has been shown from any alleged *ex parte* contacts.

B. *Financing*

1. All four of the appellants join in mounting the primary challenge to the financing of the desegregation plan, arguing that the district court erred in failing to directly order relief against the United States government.[8]

---

[8]The claims of the Caldwell appellants go beyond the financial liability of the United States. They maintain that the government should be required to take affirmative steps to reverse the discriminatory effects of federal housing and other policies. This issue has not been tried in this lawsuit. Accordingly, the district court did not err in refusing to grant affirmative relief against the United States.

We note in passing that the district court has taken steps to ensure that federally assisted housing programs are operated so as to aid in the implementation of school desegregation in St. Louis. In paragraph 12(d) of its order, the district court directed the State defendants, the United States and the St. Louis Board of Education

> [t]o develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

491 F.Supp. at 354.

No party has challenged this aspect of the district court's order. The parties have submitted plans in accordance with the order, and we approve of this effort to facilitate implementation of the overall desegregation plan.

In support of their position, the appellants point to evidence in the record, as well as to statements of the district court and this Court, indicating that the policies and practices of the federal government have been a significant cause of segregation in the St. Louis school system. The fact remains, however, that no party has named the United States as a defendant and alleged that it engaged in discriminatory practices.[9] The real question, therefore, is whether the district court abused its discretion in refusing to grant the Caldwell plaintiffs' motion to amend its complaint to seek relief against the United States.

Under all the circumstances of this case, we find no abuse of discretion. The Caldwell plaintiffs' motion to amend was filed on May 23, 1980, one week after the district court concluded evidentiary hearings on the proposed desegregation plans. At that time, the district court was operating under a stringent time schedule, mandated by this Court, requiring that the plan be implemented by the beginning of the 1980-1981 school year. Given this need to expedite approval and implementation of the plan and the likely delay attendant in adding new theories of liability against a new defendant, we hold that the district court did not abuse its discretion in refusing to grant the Caldwell group's motion to amend at that time.

In affirming the district court's refusal to grant relief against the United States, we are mindful of the significant financial role played by the federal government in implementing the St. Louis desegregation plan. In its order approving the plan, the district court expressly recognized that a substantial portion of the funding for integration would come from the United States government. The court directed the United States Department

---

[9]The Adams plaintiffs did name the United States as a defendant in its complaint in intervention. Rather that complain of the government's segregative acts, however, the Adams group alleged that the United States illegally required the St. Louis school district to take steps to desegregate the schools as a condition to release of federal funds for the district.

of Education to expedite the processing of funding applications for St. Louis under the Emergency School Aid Act (ESAA), 20 U.S.C. § 3191 *et seq.* Apparently, this direction was heeded since the St. Louis school system received over $7 million in ESAA funds—nearly one-third of the desegregation budget—to cover the costs of implementing the plan during the 1980-1981 school year. Moreover, the evidence in the record gives us no reason to believe that similar funding will not be available to continue implementation of the plan for the foreseeable future. Under these circumstances, we are unwilling to hold that the district court erred by failing to expressly order the United States to pay for part of the desegregation plan.

2. The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its actions did not violate the Constitution. More precisely, the State argues that this Court did not overrule the district court's earlier finding of non-liability on the part of the State. Thus, the State asserts, the district court was precluded on remand from finding the State to be a constitutional violator.

This contention is wholly without merit. In our March 3 opinion, we specifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams v. United States, supra,* 620 F.2d at 1295 n.28. These statements amount to a clear reversal of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so.

3. As an alternative argument, the State contends that, even if it was proper to require it to fund part of the plan, it has been ordered to pay too great a share. The State maintains that the

amount it has been ordered to pay is not commensurate with the degree of its constitutional violation. In addition, it argues that the desegregation plan budget is inflated and that the State's portion of the funding is too great as a result. We agree with neither contention.

After reviewing the discriminatory action and inaction of the State of Missouri, the district court concluded that "the State defendants stand before this Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty." 491 F.Supp. at 359. This conclusion has ample support in the record; as noted, we recognized as much in the prior appeal. It was well within the discretion of the district court, therefore, to order the State to pay one-half of the costs of integrating the St. Louis school system.

The State's complaints about the desegregation plan budget are that it includes items that are not properly considered part of the integration process and that certain savings were not taken into account. We need not review the specific items in the plan budget, however, because it is clear that the approved budget is only an estimate of the expected costs of implementing the plan. The district court's order requires the State to pay one-half of the *actual* costs of implementing the desegregation plan; the budget is used only to set a ceiling on the amount of the State's participation. In addition, the district court specifically directed that "continued efforts be made to reduce the actual costs of implementation." 491 F.Supp. at 352.[10]

---

[10]Like the State of Missouri, the Adams appellants contest the validity of the budget on the ground that it includes items not necessary for integration. Inexplicably, the Adams group also takes the seemingly inconsistent position that the amount allocated by the budget is insufficient to desegregate the St. Louis schools. For the reasons stated in the text, we need not decide the validity of these challenges to the budget.

4. The Adams' plaintiffs contend that the district court erred in directing the Board of Education to transfer approximately $4.6 million in excess funds from its debt retirement account to be used to make the building modifications necessitated by the desegregation plan. This complaint is based on the assertion that the Board of Education was without authority under Missouri law to collect surplus funds in the account reserved for the retirement of bonds. The Board of Education responds that the money in the debt retirement account was collected in accordance with statutory guidelines following annual public hearings, and that no one has complained of the accumulated surplus prior to this time.

We decline to rule on whether Missouri law authorized the Board of Education to accumulate funds in its debt retirement account. This is surely not the most suitable forum for determining the propriety of the Board of Education's bond issues. We are satisfied that the district court had discretion to order the transfer of funds already collected and held by the Board.

To summarize, we affirm the judgment of the district court and commend it for the manner and promptness with which it implemented the earlier decision of this Court. We remand the matter to the district court with directions to continue with the implementation of its plan in accordance with the slight modifications made by this opinion. All parties will bear their own costs in this appeal.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Nos. 79-1468, 1470, 1471, 1477, and 1486

Janice Adams, et al.,

Appellants,

v.

United States of America, et al.,

Appellees.

Submitted: January 16, 1980

Filed: March 3, 1980

Opinion of the Court by CHIEF JUDGE LAY, JUDGE HEANEY, JUDGE BRIGHT, JUDGE ROSS, JUDGE STEPHENSON, JUDGE HENLEY and JUDGE McMILLAN.

Prior to 1865, Missouri prohibited the creation or maintenance of schools for teaching black children to read or write. In 1865, the state legislature passed laws requiring that separate schools be established for black students. The substance of this legislation was incorporated in the Missouri Constitution of 1945. Separate schools were maintained by the St. Louis Board of Education pursuant to the legislation and the state constitution.

Ninety years after Missouri first required separate schools, the United States Supreme Court, in the *Brown v. Board of Education* decisions, found that segregated school systems were providing an inferior education to black children. It held that such systems must be disestablished with all deliberate speed. As a result of these decisions, the Missouri laws requiring separate schools were repealed or declared inoperative. The St. Louis Board of Education's response to *Brown* was to adopt a

"neighborhood school plan." Now, twenty-six years later, St. Louis elementary and secondary schools remain segregated.

The St. Louis Board of Education failed to take effective measures to desegregate the school system in the years immediately following *Brown I* and has subsequently enforced policies with respect to the assignment of students, the transportation of students, the assignment of personnel and the construction of school facilities which cannot be reasonably explained without reference to racial concerns and which have contributed substantially to continuing segregation in the school system. This failure resulted in the commencement of this action in 1972.

Since 1972, the Board of Education has taken some steps to disestablish the dual system. These include the adoption of an incremental faculty desegregation plan and the opening of several specialized and magnet schools, some of which are integrated.

In our judgment, these steps, while meaningful, are not adequate to disestablish the existing segregated school system. Something more is clearly required. We thus have no alternative but to again remand this matter to the district court with directions to require the Board of Education, in consultation with the parties, a qualified expert and an interracial committee selected by the district court from all elements of the community, to develop and implement a plan that will integrate the St. Louis public schools.

I. *HISTORICAL BACKGROUND*

Prior to the Civil War, a Missouri statute provided: "No person shall keep or teach any school for the instruction of negroes or mulattoes, in reading or writing, in this State." Act of February 16, 1847, §1, 1847 Mo. Laws 103. Beginning in 1865, the Missouri General Assembly enacted a series of statutes requiring separate public schools for blacks. *See, e.g.*, Act of

February 17, 1865, §13, 1865 Mo. Laws 170; Act of June 11, 1889, §7051a, 1889 Mo. Laws 226. This segregated system was incorporated into the Missouri Constitution of 1945, which specifically provided that separate schools were to be maintained for "white and colored children." *See* Mo. Const. art. IX, §1(a) (1945). Although a 1954 Attorney General opinion declared this provision unenforceable following *Brown I*, it remained a part of the state constitution until repealed in 1976. Statutes implementing the constitutionally mandated segregation provided for separate funding, separate enumerations, separate consolidated "colored school districts, and the interdistrict transfer of black students. Most of these statutes were not repealed until 1957. *See* Act of July 6, 1957, §1, 1957 Mo. Laws 452.

In the 1953-1954 school year, the St. Louis school district operated seven white and two black high schools, approximately eighty-three white and forty black elementary schools, and one white and one black vocational/technical school. There were 58,595 white (65.5%) and 30,880 black (34.5%) elementary and high school students attending school in the district.

Under the state-mandated segregated system, white students were generally assigned to schools in their neighborhoods. Black students attended black schools in the "core" of the city. Those black students residing outside the "core" were bussed into the black schools; for them there were no neighborhood schools.[1] Separate overlapping attendance zones were maintained for black and white students. Black students from some suburban St. Louis County school districts were also bussed into the City's black schools because state law and practice prohibited them from attending their local schools. The black schools were staffed by black teachers, administrators and nonprofessionals; the white schools by white personnel.

---

[1]*See* Appendix I.

After *Brown,* the St. Louis Board of Education declared that it would implement a plan designed to desegregate its system. The heart of that plan was said to be the "neighborhood school concept."[2] School attendance zones were redrawn and students were generally assigned to schools close to their homes. The zones were nearly identical with the boundaries of racially identifiable neighborhoods.[3] Moreover, a "continuation transfer" option was made available to all students then enrolled, permitting them to remain in the school in which they were then enrolled until graduation, unless overcrowding would result.

The new plan did not change the segregated nature of the St. Louis school system. As detailed in Part IV of this opinion, schools that had all-black student and faculty populations prior to *Brown* continued to be all black or virtually all black after the 1955 plan went into effect. Most pre-*Brown* white schools also retained their racial identity. Those pre-*Brown* white schools located in the black neighborhoods, however, turned virtually all black immediately after the plan was implemented.

II. *PROCEDURAL HISTORY*

On February 18, 1972, Craton Liddell, his mother, and other members of the Concerned Parents of North St. Louis and their children filed this action in the United States District Court for the Eastern District of Missouri seeking to represent the class of black school children in the St. Louis school system. They alleged that the Board of Education and its administrators had "effected and perpetuated racial segregation and discrimination" in the operation of the public schools of the City of St. Louis, in violation of the Fourteenth Amendment.

---

[2]At trial, St. Louis School Superintendent Robert E. Wentz, defined a neighborhood school as a "school that serves a specific geographic area defined usually in fairly close proximity to that school, the immediate area around that school."

[3]*See* Appendix II.

For more than a year, the parties engaged in discovery proceedings. On October 3, 1973, a class was certified and, by public notice, other interested parties were invited to intervene on or before December 1, 1973. No one accepted the invitation. The defendant Board of Education's motion to join as additional parties defendant the Governor, the State Attorney General, the Commissioner of Education of the State of Missouri, the State Board of Education, the St. Louis County Superintendent of Education, and the twenty school districts in St. Louis County that constitute the first two tiers of districts adjoining the City of St. Louis was also denied without comment by the district court on December 1, 1973.

Early in 1974, the district court requested that the parties stipulate as to the undisputed facts. The stipulations were filed on June 7, 1974. Following a year and a half of negotiations, the Liddell group and the Board of Education agreed to a consent decree which was approved by the court on December 24, 1975.[4] The court ordered publication of the judgment and advised that any objections thereto, either by members of the class or by other interested parties, should be filed by January 16, 1976. On that date, objections to the decree were filed by organizations representing St. Louis teachers and by a second group of black parents (Caldwell, et al.), who were joined by the St. Louis Chapter of the NAACP. The Caldwell group moved to intervene.

---

[4]The consent decree is set out in full as Appendix B to the district court's opinion, *Liddell v. Bd. of Ed., City of St. Louis, Etc.*, 469 F.Supp. 1304, 1387 (E.D. Mo. 1979). The decree explicitly stated that nothing therein was to be deemed an admission by the Board of Education that the plaintiffs' allegations were true. It did include, however, an admission that "segregation is present, as a matter of fact, in the Public School System of the City of St. Louis * * * ." *Id.* at 1389. To remedy that segregation, the decree required the Board of Education "to take affirmative action to secure unto plaintiffs their right to attend racially nonsegregated and nondiscriminatory schools * * * and * * * to take the affirmative action hereinafter set forth." *Id.* at 1389. The decree then required the Board to (1) progressively

At a hearing, Liddell and the Board of Education defended the consent decree and opposed the motion for intervention. The district court overruled the objections and denied the Caldwell group's motion to intervene on the grounds that the motion was untimely and that the class was adequately represented. The Caldwell group appealed the district court's denial of its motion to intervene. This Court reversed on December 13, 1976. *Liddell v. Caldwell,* 546 F.2d 768 (8th Cir. 1976). On appeal, we first considered the argument that the Caldwell motion was untimely. The Caldwell group's position was that intervention was appropriate because the group was primarily interested in the remedial issue, an issue that had not yet been fully or adequately resolved. Noting that, "as all agree, [the consent decree did] not constitute the overall plan for desegregation," but represented "only partial steps toward implementing a unitary system, " *id.* at 771, this Court held that intervention for the purpose of litigating the remedial issue was timely.

We turned next to the issue of the adequacy of the class representation. The Caldwell group argued that the plaintiffs had abandoned the original goal of the litigation when they entered into consent decree. In particular, Caldwell attacked the decree for its failure to require desegregaton of the elementary schools and for offering only marginal opportunity for desegregation in grades seven through twelve. Caldwell complained, in essence, that the consent decree ignored the need for meaningful

---

desegregate its faculty so that, in 1976-1977, 10%, in 1977-1978, 20%, and in 1978-1979, no less than 30% of the teachers and staff in each school would be of the minority race in that school; (2) consider the objective of eradicating segregation when making decisions regarding the construction or closing of schools; (3) make a study, to be submitted to the court in January of 1977, on the realignment of elementary feeder schools to high schools to reduce segregation at the high schools, and (4) make a report to the court on whether magnet elementary schools and special subject high schools would be of assistance in eliminating segregation and on the feasibility of system-wide curriculum improvement. Jurisdiction over the case was retained by the district court.

integration. We observed that "if the overall plan to be submitted by the board [in compliance with the consent decree] contains major deficiencies in the respects asserted, the plan will encounter serious constitutional objection." *Id.* at 733.

Since serious questions had been raised concerning the adequacy of the consent decree and because remedial planning was to be an ongoing process, we directed the district court to immediately grant the Caldwell group's petition for intervention. Further, in light of the difficulties of achieving a successful remedy, we suggested that the district court invite the United States Department of Justice and the Missouri State Board of Education to intervene, that a biracial citizens committee be created to aid in the planning of a remedy, and that a voluntary inter-district solution be investigated. We further directed the district court to hear objections to the Board's forthcoming desegregation plan and to consider any alternative plans submitted by other parties. Finally, we directed that "[i]n no event should implementation of plans for a unitary school system be delayed beyond the commencement of the 1977-78 school term." *Id.* at 774. The Board of Education promptly filed a petition for certiorari with the United States Supreme Court.

On February 25, 1977, the district court granted the Caldwell group leave to intervene.

On February 28 and March 10, 1977, the Board of Education submitted a plan for reducing racial segregation in the City's secondary schools. Thereafter, the parties filed their objections to the plan and, in April of 1977, the district court held a hearing. Finding that the only portion of the Board of Education's plan on which there was agreement was that relating to magnet schools, the court ordered the Board to proceed with the implementation of that part of the plan for the school year beginning in September of 1977. The court withheld action on any other aspect of the plan and scheduled further hearings on the plan and its alternatives for July 25, 1977.

Later that spring and summer, Liddell, the Caldwell group and the United States Department of Justice (as amicus curiae) submitted alternative plans for the desegregation of the school system. In May, the Caldwell group moved to enforce its plan by injunction.

On June 27, 1977, the Supreme Court denied the Board's petition for certiorari. *St. Louis Board of Education v. Caldwell, et al.*, 433 U.S. 914 (1977). On July 13, 1977, the district court decided, on its own motion, that it was now necessary to determine whether there had been any constitutional violation that would support the imposition of a remedy. The court stated: "This determination has never been made by the consent decree nor the stipulation of facts, and the stipulation of facts denies any constitutional violation by defendants. * * * The remedy to be adopted by the Court will depend on the nature and extent of the constitutional violation, if any." *Craton Liddell, et al., and Earline Caldwell, a Minor, et al. v. The Board of Education of the City of St. Louis, Missouri, et al.*, No. 72 C 100(1), slip op. at 2 (E.D. Mo. July 13, 1977).

By various orders during the summer of 1977, the United States, the City of St. Louis, Janice Adams, et al. (representing the Concerned Parents for Neighborhood Schools) and Mary Puleo, et al. (representing the Involved Citizens Committee) were allowed to intervene as plaintiffs. The State of Missouri, the Commissioner of Education of the State of Missouri and the State of Missouri Board of Education were added as parties defendant.

With the understanding that both liability and remedy were at issue, the case proceeded to trial.[5] The eight parties aligned themselves into two principal groups. One group, Liddell, the Caldwell group and the Department of Justice, took the position that the Board of Education had violated the United States Constitution by its operation of the public schools. Each then argued the merits of its own remedial alternative. The second group, the Board of Education, the State of Missouri, the City

---

[5]We note that the lengthy trial produced over 7,000 pages of transcript and about 1,200 exhibits which both expanded and supplemented the facts set forth in the stipulation filed more than three years before trial. The district court considered the entire record as do we.

of St. Louis and Adams, denied that any constitutional violation had occurred.[6] The Board of Education argued that it had never acted with an intent to segregate and that it was not responsible for any racial segregation found to exist. It agreed, nonetheless, to implement its desegregation plan developed pursuant to the consent decree. The State argued that there had been no violation but that, in any event, it was not responsible and should not be made to participate in any remedy. Puleo did not participate in the trial.

On April 12, 1979, the district court handed down its decision. *Liddell v. Bd. of Ed., City of St. Louis, Etc.,* 469 F.Supp. 1304 (E.D. Mo. 1979). If found no constitutional violation by the defendants. It concluded that the St. Louis Board of Education had fulfilled its obligation to create a unitary school system in 1955 and 1956 by the adoption of "a neighborhood school policy." It held that the resegregation of the system had resulted from demographic shifts influenced by the policies of the federal government and others, not by the acts or omissions of the Board of Education. Nevertheless, the district court held that the Board of Education was bound by the consent decree. As a guide to continued planning under that decree, the court instructed that

> [s]ince no constitutional violation has been found, the criteria shall be quality education, which includes integration of the races, where practical and feasible.
>
> *Id.* at 1365.

---

[6]Adams and the City also argued that the court had no authority to enforce the consent decree because no violation had occurred. They have again made that argument in their appeal to this Court. The district court considered this position "untenable." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1365. In light of our disposition of this case, we have no occasion to consider the argument.

III. *ISSUES ON APPEAL*

The principal issues on appeal are: (1) whether the Board effectively desegregated the school system in 1954-1956 by adopting and implementing its neighborhood school plan; (2) whether the Board policies or actions since that date have contributed to the present segregated condition of the school system; (3) what policies and actions must now be taken to integrate the St. Louis elementary and secondary schools; and (4) whether certain appellants should be awarded attorney fees.[7]

IV. *EFFECTIVENESS OF THE 1954-1956 BOARD PLAN*

The record in the present case clearly establishes that the St. Louis Board of Education's 1954-1956 "neighborhood school plan"[8] had very little, if any, effect on the existing dual school

---

[7]An additional issue on appeal is whether the district court erred in holding moot Adam's contention that the Board's policy regarding admission to the magnet schools discriminated against white non-public students. The district court held the question to be moot because the policy was abandoned in the 1978-1979 school year. *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1354. We agree.

[8]The Board of Education notes that, besides the neighborhood school policy, its 1954-1956 plan included educational programs for parents and faculty, and inter-school visitations and lectures for the students designed to lessen racial tension. We have no reason to doubt that the Board took whatever steps it could to lessen conflict within the school system and community but these steps did not fulfill the defendants' constitutional duty to disestablish the dual system. Indeed, it appears from the record that, in the interest of avoiding conflict, the Board took steps to ensure that no significant desegregation occurred.

The Board also emphasizes that schools with city-wide enrollment, such as Harris Teachers College and special elementary schools for handicapped students, were desegregated pursuant to the 1954-1956 plan. This fact, however, does not in any way excuse the Board's failure to desegregate the regular elementary and secondary schools in the City.

system in the Ctiy. The new plan resulted in most of the student population continuing to attend one-race or virtually one-race schools. Although there are few exact figures for the period immediately following implementation of the plan because the Board of Education kept no records of school racial composition from 1955 to 1962, all the available data demonstrates that little desegregation actually occurred in 1954-1956.

A 1956 Board of Education report cited 1955 projections indicating that over one-half of the white elementary schools (46 or 83) would have an all-white student population and two-thirds of the black elementary schools (27 of 40) would remain all black immediately following the plan's implementation. The remaining thirteen formerly all-black elementary schools were also projected to remain segregated, with student populations ranging from 82% to 99% black at a time when blacks comprised approximately 35% of the public school population. *Cf. Columbus Board of Education v. Penick,* ____ U.S. ____, 61 L.Ed.2d 666, 673 (1979).

The situation was similar in the high schools. A 1962 staff report to the United States Civil Rights Commission stated that the two formerly black high schools, Sumner and Vashon, enrolling more than 3,400 students, remained all black after the plan was implemented. The 1955-1956 populations of the seven formerly white high schools were reported to be as follows:

SCHOOL	NO. WHITE	NO. BLACK	% BLACK
Southwest	1,583[9]	0	0 %
Cleveland	1,476	7	0.4%
Roosevelt	1,791	29	1.5%
Beaumont	1,792	98	5 %
McKinley	1,437	211	13 %
Central	1,034	167	14 %
Soldan	1,000	350	26 %
	10,083	862	7.9%

In 1962, the Board of Education again began to keep complete records on the racial composition of schools in the district. Those records corroborate earlier evidence of the segregative effects of the School Board's plan. In that year, all twenty-eight of the formerly black elementary schools still in existence were all or virtually all black; thirty-six other elementary schools were over 90% black. Eighty-one percent of the black students attended schools that were 90% or more black. Similarly, fifty of the formerly white schools remained 85% or more white in 1962 and two-thirds of the white students attended schools that were 90% or more white. The 1962 figures also show that the overall school population and the black percentage had increased since 1954. The 1962-1963 total enrollment was 108,245—55.4% black and 44.6% white.

These segregated patterns in student assignments were mirrored in the faculty assignments. Of the twenty-eight pre-*Brown* black schools still in existence in 1962, twenty-six had faculties that were 100% black. The other two were Sumner High School (98.7% black) and Henry elementary (82.8% black). Moreover, those formerly white schools that had changed student racial identity between 1954 and 1962 tended to change faculty racial identity as well.

---

[9]The number of white students at Southwest is estimated based on the 1953-1954 student enrollment figures.

By the start of the 1979-1980 school year, the district enrollment had decreased to 66,011, while the district-wide percentage of black students had increased to 75.5%. Eighty-two percent of the black students still attend schools that are 90% or more black. Of the 119 regular elementary and secondary schools currently operating in the district, seventy-eight (65.5%) are currently 90% or more black; fourteen (11.7%) are 90% or more white. Thus, 77.3% of the regular schools in the City are now essentially one-race schools.[10]

The defendants do not dispute the segregated nature of the St. Louis school system. Instead, they argue that current segregation "is not the result of present or past discriminatory action on their part." *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 26 (1971). Specifically, defendants assert that they disestablished the dual school system, as required by *Brown,* when they instituted the "neighborhood school policy"[11] in 1954-1956. The district court agreed with this contention. A careful review of the record and the controlling law, however, convinces us that the district court was clearly in error as to the constitutional requirements imposed on defendants who have formerly discriminated pursuant to state law. It also erred in its evaluation of the extent to which the defendants have met those requirements.

---

[10]*See* Appendix III detailing enrollment statistics for 1975-1976. Statistics for 1979-1980 have been filed with this Court by the defendant School Board.

[11]Under the 1954-1956 Board plan, students were assigned to schools close to their homes. In that sense, the plan was a "neighborhood" plan. The boundary lines for the high schools, however, were drawn so as to assign the students living in the predominately black neighborhoods to the two pre-*Brown* black high schools. *See* Appendix II. Following implementation of the School Board plan, both of these schools opened with 100% black enrollments. The elementary school boundaries were also drawn so that the schools remained highly segregated.

The district court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." *See Green v. School Board of New Kent County,* 391 U.S. 430, 437-438 (1968). Neighborhood school policies have been the subject of Supreme Court attention on numerous occasions. The Court has consistently held that merely establishing a facially neutral school assignment system is not sufficient to eliminate the constitutional violation caused by past intentional discrimination. In *Swann,* the Court stated,

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. * * *
>
> * * * "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artifical racial separation. * * * In short, an assignment plan is not acceptable simply because it appears to be neutral.

An examination of the maps and population statistics in this record makes it clear that the Board could have, without sacrificing the neighborhood concept, drawn the boundaries so as to include significant numbers of white students in the formerly all-black schools. A reading of the record also makes clear, however, that strong community oppostion has prevented the Board from integrating the white children of South St. Louis with the black children of North St. Louis.

Swann v. Charlotte-Mecklenburg Bd. of Ed., supra at 28; *see Keyes v. School District No. 1,* 413 U.S. 189 (1973);[12] *Clark v. Board of Education of Little Rock School Dist.*, 426 F.2d 1035 (8th Cir. 1970) (en banc), *cert. denied,* 402 U.S. 952 (1971). In *Davis v. Board of School Commrs.*, 402 U.S. 33, 37 (1971), the Court expressly stated that neighborhood school zoning is not "per se adequate to meet the remedial responsibilities of local boards." *See also Arnulfo M. Diaz, et al. v. San Jose Unified School District, et al.,* No. 76-2148, slip op. at 582 (9th Cir., Nov. 5, 1979) ("The existence of such a [neighborhood] policy is not enough to prove the absence of segregative intent."). Indeed, the Court has gone so far as to question whether a racially neutral policy would ever be adequate to meet a school board's affirmative duty to disestablish a dual school system: "In this remedial process, steps will almost invariably require that students be assigned 'differently because of their race.' * * * Any other approach would freeze the status quo that is the very

---

[12]In *Keyes,* the Supreme Court stated:

> Our Brother Rehnquist argues in dissent that Brown v Board of Education did not impose an "affirmative duty to integrate" the schools of a dual school system but was only a "prohibition against discrimination" "in the sense that the assignment of a child to a particular school is not made to depend on his race . . ." Infra, at 258. That is the interpretation of Brown expressed 18 years ago by a three-judge court in Briggs v Elliott, 132 F Supp 776, 777 (1955): "The Constitution, in other words, does not require integration. It merely forbids discrimination." But Green v County School Board, 391 US 430, 437-438 (1968), rejected that interpretation insofar as Green expressly held that "School boards . . . operating state-compelled dual systems were nevertheless clearly charged [by Brown II] with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Green remains the governing principle.

Keyes v. School District No. 1, 413 U.S. 189, 200 n.11 (1973).

target of all desegregation processes." *McDaniel v. Barresi,* 402 U.S. 39, 41 (1971).[13]

The record shows that the Board's 1954-1956 plan perpetuated the segregated school system. One School Board document discloses that the results of the 1954-1956 plan were specifically intended. A 1956 report, prepared by the Office of the Superintendent of Instruction, stated that when the 1954-1956 plan was implemented, the school attendance zones were drawn so as to "re-locate the smallest possible number of pupils." Similarly, the post-*Brown* policy adopted by the School Board was designed to have the least possible impact on the segregated personnel assignments. The policy provided: "Whenever possible, both teaching and non-teaching employees will retain their present assignments." Preservation of the status quo, obviously, meant preservation of a segregated system.

Aside from direct statements of intent, there is an abundance of evidence from which segregative intent can be inferred. According to one of the most recent Supreme Court pronouncements on the question, one factor tending to indicate the existence of segregative intent is a school board's "[a]dherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence upon racial imbalance in a

---

[13]The School Board relies on several Sixth Circuit cases upholding neighborhood assignment policies that resulted in foreseeable racially imbalanced schools. *See Higgins v. Board of Education of City of Grand Rapids,* 508 F.2d 779 (6th Cir. 1974); *Deal v. Cincinnati Board of Education,* 419 F.2d 1387 (6th Cir. 1969); *Deal v. Cincinnati Board of Education,* 369 F.2d 55 (6th Cir. 1969). These cases are easily distinguished from the present case. First, neither *Higgins* nor *Deal* involved a completely new neighborhood system with redrawn attendance zone boundaries; both Cincinnati and Grand Rapids had used a neighborhood school system for many years. More importantly, neither *Higgins* nor *Deal* involved a situation in which segregation had been imposed by law until the time of *Brown.*

school system." *Columbus Board of Education v. Penick, supra* at 681. The immediate effects of the St. Louis School Board's 1954-1956 plan were plainly foreseeable by the Board and school administrators. As is graphically portrayed in Appendix II, the 1955-1956 high school attendance zones were drawn so as to correspond, with remarkable consistency, to the racially identifiable residential neighborhoods in the city. Elementary school boundary lines were drawn in a similar fashion. The result was inevitable and unquestionably foreseeable: As detailed earlier, the black schools remained predominately black and the white schools remained predominately white, with very few exceptions.[14]

Further evidence of the Board's intent to maintain a segregated school system is the "continuation transfer" policy that was a part of the 1954-1956 plan.[15] The policy provided:

> Students already enrolled in a school, but not resident in its new district may, but are not required, to continue at that school until they graduate. This privilege will be granted, however, only if the particular school is not overcrowded.

---

[14]Despite this persuasive evidence, the district court concluded that the 1954-1956 plan "did not have the foreseeable consequence of bringing about or maintaining segregation," primarily because "[t]he massive changes in the racial makeup of the City in the late 1950's and 1960's were not foreseeable by the Board." This conclusion is clearly erroneous. The Board knew that when its plan was implemented, the white schools in South St. Louis would remain white and the black schools in the "core" area of the City would remain black. If the Board had fulfilled its constitutional duty in 1954-1956 and the schools were thereafter resegregated by massive changes in the racial makeup of the City, we would have another case.

[15]Former Superintendent William Kottmeyer testified that "a good many" white students exercised the continuation transfer option in order to remain in predominately white schools. The 1962 Civil Rights Commission report stated that over 40% of the black students assigned to schools other than the ones to which they had previously been assigned elected to remain in their former schools.

The unmistakable intent and effect of this policy was to preserve the pre-*Brown* system of school assignments.[16] Like the "freedom-of-choice plan" disapproved by the Supreme Court in *Green v. School Board of New Kent County, supra,* the continuation transfer option virtually guaranteed that the School Board plan would be an ineffective tool of desegregation. *See id.* at 440.

The foregoing demonstrates that the School Board's 1954-1956 plan did not meet the defendants' constitutional duty to disestablish the dual school system in the City of St. Louis. The Supreme Court's conclusion in *Columbus* is applicable to St. Louis as well: "Whatever the Board's current purpose with respect to racially separate education might be, it knowingly continued its failure to eliminate the consequences of its past intentionally segregative policies. The Board 'never actively set out to dismantle this dual system.' " *Columbus Board of Education v. Penick, supra* at 679,[17] quoting the district court's opinion in that case, 429 F.Supp. at 260.

---

[16]The School Board asserts that the continuation transfer option was simply the extension of a long-standing policy that permitted a student to remain in a given school even though he moved his residence out of that school's attendance zone. We disagree. That policy, which would benefit the School Board by helping to keep the enrollment level at each school constant, is obviously not the same as the transfer policy included in the 1954-1956 plan. The latter policy, which would aid the School Board in no way other than to reduce public outcry by ensuring that no significant desegregation occurred, allowed students to defeat the purpose of the plan by electing to remain in their former school after the Board had changed the attendance zones for those schools.

[17]The defendants assert that the 1954-1956 Board plan was widely acclaimed by civil rights leaders. For example, the author of the 1962 Civil Rights Commission Report, Wylie H. Davis, described the 1954-1956 transitions as "solidly conceived and brilliantly carried off." We find no reason to disagree with the Davis statement. The problem is that the "transitions" he spoke of did not desegregate the school system. A careful reading of the report reveals that Mr. Davis recognized that the School Board plan had very little effect on the segregated nature of the school system despite the hopes some may have had for the new policies.

V. *POST-1956 SEGREGATIVE ACTS*

The dual school system in St. Louis, legally mandated before 1954 and perpetuated by the Board of Education's 1954-1956 desegregation plan, has been maintained and strengthened by the actions of the Board in the years since. The Board's steadfast adherence to a student assignment policy which did not desegregate the schools and its use of intact busing, school site selection, block busing, permissive transfers, and faculty assignments have preserved segregation in the school system.

1. *Student assignment policies.*

Perhaps the most significant segregative policy of the St. Louis Board of Education in the years since 1956 has been its adherence to the neighborhood school student assignment policy. Despite the Board's "continuing 'affirmative duty to disestablish the dual school system,' " *Columbus Board of Education v. Penick, supra* at 678, quoting *McDaniel v. Barresi, supra* at 41, the Board has continued a policy that, in 1979, still sends black students to black schools and white students to white schools.[18] This basically segregative policy, moreover, has been enhanced by successive and consistent Board action.

The first of these successive actions was the use of intact busing. "Intact busing" is a technique that daily sends an entire class of students, with their teacher, from an overcrowded school to a vacant classroom elsewhere. The technique was used to combat overcrowding in the pre-*Brown* era with white students being bused to white schools and black students to black schools. Because the 1954-1956 redistricting temporarily reduced overcrowding, intact busing was used sparingly from 1955 to 1957. In 1959, however, intact busing again became significant and over 1,000 students were so bused. This number grew to more

---

[18]As we noted earlier, 82% of the black students currently attend "neighborhood" schools that are more than 90% black.

than 6,000 by 1963. The bused students were treated administratively as part of the school from which they came rather than the school to which they were sent. Consequently, they often arrived, recessed, ate lunch and departed on different schedules than the other students in the receiving school. They thus became an isolated subset of the school in which they were housed. Significantly, in the post-*Brown* era most of the students affected by this policy were black students sent to white schools.[19]

In 1962, a group of black parents complained about this policy to the Board of Education. Suit and countersuit were filed over the constitutionality of intact busing. These suits were dropped, however, when the opening of new schools and the Board's modification of its policy defused the issue.[20] By 1964, intact busing had ceased.

---

[19]The district court found that the "intact busing policy had a disproportionate impact on black children * * * because black children * * * were bused more often than whites." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1336. It did not, apparently, consider the fact that the black students so bused were maintained as separate entities in the host white schools as a part of the impact of this technique on the black students. This despite the fact that Dr. Clifford P. Hooker, an expert witness appearing for the Board of Education, acknowledged the detrimental effects of intact busing on both black and white children. *Cf. Jackson v. Marvell School District No. 22,* 425 F.2d 211 (8th Cir. 1970) (overturning "desegregation" plan that required students to remain with the teacher they had under segregated system.).

[20]The modification replaced intact busing with block busing, whereby students from certain blocks in the overcrowded school's attendance zone were bused to other schools and incorporated into those schools. As implemented, this policy, too, was to have segregative effects, as detailed later in this opinion.

Segregation in student assignment, however, continued. All ten of the new schools that opened in 1964 (thereby reducing the need for intact busing) were between 98.5% and 100% black at the time of opening. This reflects a durable pattern of segregative school construction and opening in the district. Of the thirty-six elementary schools that were either newly constructed or newly opened between 1962 and 1975, thirty-one were over 93% black on opening and four were over 94% white. Only one was integrated to any significant degree. This pattern is contrary to the teaching of the Supreme Court that "the responsibility of the local authorities * * * is to ensure that future school construction * * * [is] not used and [does] not serve to perpetuate * * * the dual school system." *Columbus Board of Education v. Penick, supra* at 678.

Another practice that had a foreseeable and predictable segregative effect is the Board's post-1964 busing policy. Despite the newly opened schools mentioned above, overcrowding in some schools in the district continued or recurred. The Board of Education responded by busing students from the overcrowded areas to underused facilities. Intact busing was replaced with block busing. *See* note 20, *supra*. Significantly, although overcrowding occurred in both black and white schools, and both black and white schools were available for transfer, there has been black-to-black, black-to-white and white-to-white busing, but very little white-to-black busing. Of the 3,190 black students bused because of overcrowding in 1973, 81% were bused to schools that were over 75% black. Similarly, of the 575 whites bused because of overcrowding, 85% were sent to schools that were over 94% white. Only twenty-seven whites (4.7% of the whites bused because of overcrowding) were sent to predominately black schools.

The district court specifically found that 63.7% of the blacks bused for overcrowding in 1974-1975 were assigned to schools that were between 90% and 100% black; 67% were similarly assigned in 1975-1976. *Liddell v. Bd of Ed., City of St. Louis, Etc., supra* at 1337. The court noted that one reason that there

was not more racial mixing in these transfers was that the overcrowded black schools were in far north St. Louis while the white schools were located in the south. It concluded that "[n]othing improper can be inferred from busing students to closer schools." *Id.* We cannot agree. First, the record simply does not sustain the finding that the differences in distance were significant. Second "the measure of the post-*Brown* conduct of a school board under an unsatisfied duty to liquidate a dual system is the effectiveness, not the purpose, of the actions in decreasing or increasing the segregation caused by the dual system. * * * As was clearly established in *Keyes* and *Swann,* the Board had to do more than abandon its prior discriminatory purpose." *Dayton Board of Education v. Brinkman,* ____ U.S. ____, 61 L.Ed.2d 720, 734 (1979). In alleviating overcrowding, the Board authorized substantial student transportation. This transportation could have been used to help establish a unitary school system in St. Louis. Instead, it was used to perpetuate a dual system. Any findings to the contrary are clearly erroneous.

The permissive transfer policy also served to perpetuate segregation in the St. Louis school system. Originally adopted in the hope that it would help ameliorate the segregative consequences of neighborhood schools, the policy allowed students to transfer out of their assigned school to other schools in which space was available. Until 1974, however, parents had to assume responsibility for providing transportation. As a result, affluent white students were able to transfer away from integrated school assignments to all-white schools. In 1974, the policy was amended so that the school district provided transportation. Nevertheless, the policy had a segregative effect for many years.

2. *Faculty and administrator segregation.*

The perpetuation of a dual school system may be manifested not only in student assignment policies but also in the assignment of teachers and administrators. "Independent of student assignment, where it is possible to identify a 'white school' or a 'Negro school' simply by reference to the racial composition of

teachers and staff, the quality of schools and equipment, or the organization of sports activities, a prima facie case of violation of substantive constitutional rights under the Equal Protection Clause is shown." *Swann v. Charlotte-Mecklenburg Bd. of Ed., supra* at 18.

Before 1954, teachers and administrators were segregated by law. After *Brown,* the express policy of the Board was to maintain then-current teaching assignments. In addition, the acknowledged resistance of some school principals and the community was found by the district court to "have limited the degree of racial mixing of school faculties." *Id.* at 1346. Indeed, racial segregation of faculties has been as pervasive as student segregation.

In 1962, only thirty-three of the system's 1,272 black elementary school teachers taught in schools with less than a 90% black student enrollment, and only thirty-four of the 283 black high school and vocational teachers were assigned to schools that were less than 99% black. Ten years later, during the 1972-1973 school year, thirty elementary schools still had all-white faculties, twenty-seven elementary schools still had all-black faculties and ninety-one faculties were at least 90% one race. And this was at a time when the faculty was 46.4% white, 53.6% black district-wide.

The district-wide pattern of faculty segregation is dramatized by the assignment of faculty to newly opened schools. Eleven of the schools opening since 1962 had faculties that were 100% black upon opening, four had faculties that were 100% white and only four had faculties that were between 40% and 60% black. The evidence clearly indicates that black faculty members were assigned primarily to black schools and that white faculty members were assigned to white schools.

The distribution of black administrators throughout the district reflects a similarly race-conscious assignment pattern. The central office was desegregated by 1973. In the district of-

fices, however, administrators were clearly assigned on the basis of race. The Central-Vashon and Beaumont-Sumner districts, which were predominately black, were staffed 100% black at the district level; the Cleveland-Southwest District, nearly all-white in student population, was staffed 100% white at the district office. Further, there were no black administrators in racially identifiable white schools.

The district court, while acknowledging this pattern, concluded that the racial composition of faculty and administration did not influence the racial composition of the school. "Racial identifiability of schools is not now and was not in the past a result of the Board's failure to mandatorily achieve more racially balanced faculty." *Liddell* v. *Bd. of Ed., City of St. Louis, Etc., supra* at 1347 (footnote omitted). Rather, the district court assigned exclusive responsiblity for the racial identifiability of schools to the City's demographics. *Id.* We cannot agree. The record contains substantial expert testimony indicating that public perception of the racial identity of a school can be maintained as effectively by a one-race faculty as by a one-race student body and public perception of the racial identity of a school can be, and often is, a powerful factor in shaping the residential patterns of a neighborhood. By maintenance of a segregative faculty assignment policy, the St. Louis Board of Education encouraged the perpetuation of its dual school system.

VI. *OTHER FACTORS CONTRIBUTING TO SEGREGATION*

The district court, having erroneously concluded that the Board of Education discharged its duty to desegregate the St. Louis school system by adopting a neighborhood school plan and by refraining from discriminatory actions thereafter, went on to find that factors over which the Board of Education had no control are substantially responsible for today's segregation in the St. Louis school system. The most important factor is said to be the dramatic change in the demography of the City. These

demographic changes were found by the district court to have been caused by discriminatory housing, urban renewal and highway land acquisition policies of the federal government; state laws and policies mandating discrimination in housing;[21] discriminatory private policies, including red-lining and separate newspaper listings for "colored" housing; and general population movements unrelated to any specific governmental policies.

The initial problem with this finding is that it is based on the two erroneous conclusions noted in the preceding paragraph. The second problem is that it is not supported by the record. The facts are that most schools in the heart of North St. Louis were black in 1954 and remain black today, and that most schools in South St. Louis were white in 1954 and remain white today. The Board of Education has simply never dealt with this overwhelming reality. If the Board had dealt with the problem in 1954-1956 and had implemented a plan for integrating the schools in North and South St. Louis, we would have a different

---

[21]The court stated:

> Prior to 1954 a pattern of racial housing segregation prevailed in the City and discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri. *Dolan et al. v. Richardson et al.*, 181 S.W.2d 997 (Mo.App.St.L.,1944); *Shelley v. Kraemer*, 335 Mo. 814, 198 S.W.2d 679 (en Banc, 1946) *rev'd*, 334 U.S.1, 68 S.Ct. 836, 92 L.Ed. 1161 (1947); and *Jones v. Alfred H. Mayer Co.*, 255 F.Supp. 115 (E.D. Mo. 1966); *aff'd*, 379 F.2d 33 (8th Cir. 1967), *rev'd*, 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed.2d 1189 (1968).

Liddell v. Bd. of Ed., City of St. Louis, Etc., supra at 1323.

> We note the date of the *Jones v. Alfred H. Mayer Co.* decision and add that some suburban communities in Missouri continue to try to enforce discriminatory housing restrictions against blacks. *See Park View Heights Corp. v. City of Black Jack*, 605 F.2d 1033 (8th Cir. 1979); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975); *Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972)

case today. We would have to examine the question from an entirely different point of view. *See Pasadena City Bd. of Educ. v. Spangler,* 427 U.S. 424 (1976). But it did not; the schools remain segregated and we have no choice but to adopt a practical remedy to achieve an integrated school system.

We do recognize that many of the factors cited by the Court, including actions of the state and federal governments, have intensified racial segregation in North St. Louis. We have taken this fact into consideration in determining the appropriate remedy in this case. We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation.

VII. *THE REMEDY*

Segregation in the elementary and secondary schools in St. Louis now must be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

1. *Remedial alternatives proposed by the parties.*

The major focus of the plan submitted by the Board of Education is the creation of junior high schools. Three or more junior high schools would be opened each year over a period of four years and as many of these as possible would be assigned equal numbers of black and white students. At this ratio of assignment, there would necessarily be some all-black junior high schools remaining. All the junior high schools would be aligned into feeder patterns designed to reduce racial isolation in the high schools.

The Board also proposed the creation of a new Business and Office Magnet High School, two specialty high schools, the expansion of enrollment at Metro High School and the converion

of O'Fallon Technical High School to a full-day comprehensive technical high school with an enrollment policy aimed at securing "appropriate representation of both races." The Board further proposed that the racially isolated schools be associated for special projects and activities, the purpose being to provide opportunity for significant interracial contacts and experiences. These proposals were designed to provide some racial mixing for the remaining all-black and all-white schools. The Board additionally suggested that it undertake a feasibiltiy study of an Educational Park, designed to house a variety of magnet and specialty high schools. It expressed the hope that the Park could be studied, designed and built in about four years.

The Board's plan did not purport to integrate grades kindergarten through six. The plan did provide, however, for the establishment of seven magnet elementary schools with proposed enrollments of 50% white and 50% black students. These magnet schools would offer various educational alternatives to the traditional classroom setting in the City's regular elementary schools. These schools, together with two magnet high schools, were established pursuant to the district court's order in April of 1977. The specialty and magnet schools currently enroll about 13% of the City's school population. The racial goals established by the Board for its magnet and specialty schools have not been met.[22]

The Board finally urged that if something more was required to desegregate the schools, the district court should require a metropolitan plan encompassing the neighboring two tiers of schools in St. Louis County. It argued that only such a plan would stabilize the schools in the City and the metropolitan area.

---

[22]In the current school year (1979-1980), the secondary magnet school populations are approximately 65% black, and the elementary magnet schools range from 58% to 93% black. The special secondary schools range from 66% to 100% black, and the special elementary schools, excluding Lutheran Hospital, ranged from 15% to 100% black.

The Caldwell group proposed a plan prepared by Dr. Michael J. Stolee, Dean of Education at the University of Wisconsin, Milwaukee. Under the Stolee plan, using the techniques of pairing, clustering and boundary adjustments, each elementary and secondary school in the system would be brought into rough conformity with the overall 75% black-25% white racial mix of the school district. Schools whose existing black-white ratio is within 15% of the district-wide ratio would be unaffected by the plan. Under the plan, the high schools were projected to have from 63% to 80% black students; the elementary schools to have between 51% and 85% black students.

The original plaintiffs proposed a plan prepared by Dr. David L. Colton, Associate Professor of Education at Washington University, St. Louis. The Colton plan would convert the St. Louis public school system from a two-tier system (kindergarten through eight and nine through twelve) to a four-tier one (kindergarten through three, four through six, seven through nine and ten through twelve). The first tier schools would continue as "neighborhood schools." Second tier students would be housed in the same building as the first tier. Assignments to the second tier would be made to achieve a 55% black-45% white student population in as many second tier units as possible. The remaining second tier units would enroll only black students. Third tier students would be housed in existing school buildings adopted for use as junior high schools. The student assignment pattern for these schools would be designed to achieve a racial distribution of 60% black and 40% white. There would be no all-white junior high schools but approximately one-third of the junior high schools would continue to enroll only black students. Fourth tier students would be housed in seven high schools. Five of these schools would have a 60% black-40% white racial mix. Two would be all black. Student assignments would be made so that no student would attend both an all-black junior and senior high school. Every black student would thus receive at least one-third of his or her education

in grades four through twelve in an integrated environment. Every white student would be in an integrated school after the third grade. The City's special education programs would be combined with those in St. Louis County, and a desegregation planning group with representation from all groups in the community would be established. This planning group would focus on teacher training, administrative reassignment, community support and student response.

The United States Department of Justice took the position that either the Stolee plan or the Colton plan would desegregate the present dual school system. It also stated that integration could be achieved if a plan was developed in accordance with the views of its expert witness, Dr. Gary Allen Orfield. Dr. Orfield testified: (1) that currently integrated schools should be left alone and every effort should be made to stabilize them for the foreseeable future;[23] (2) that all white schools, and as many black schools as possible, should be integrated with a substantially even relationship (50% black-50% white) between minority and majority children, and that this be done at every grade level, but particularly at the elementary level;[24] (3) that specialized programs should be included in the neighborhood schools so that parents are assured that their children will not be locked in a slow-moving curriculum; (4) that free choice, intra and inter-

---

[23]Dr. Orfield testified that

> when you have an integrated neighborhood with an integrated school, you should never close that school; * * * you don't bus children into that school, and you should do everything possible to continue to keep it as an integrated school, and to get people to notice that if they move into that neighborhood, they're not going to be moving into a transitional neighborhood, but they're going to be moving into one that has a stably integrated school.

[24]Dr. Orfield testified that it is best to begin the integration process in the first grade. He also testified that it is ill-advisded and unworkable to start desegregation at the junior high level. He stated:

> If you visit schools, you find a lot more difficulty in junior highs where students are generally in a difficult passage point in life anyway than you find in elementary schools which are much, much easier to desegregate.

district transfers should be permitted, particularly for black students who would be left in all-black schools[25] and that

---

> * * * [T]here is also * * * stark evidence that the educational advantages from desegregation are through the schools that are * * * desegregated * * * from the first grade, so if I were going to choose one aspect of a school system to desegregate, junior high would probably be the last one, * * * the elementary schools would be the first one.
>
> * * * *
>
> * * * [T]here are many reasons why this is probably true. One is that children in the first grade have very little achievement gap compared to what they have later.
>
> Another is that they have very little racial consciousness * * *.

Other expert witnesses agreed that black children will achieve academic gains in an integrated school, particularly at the elementary level. They disagreed as to the extent of the gains and whether there would be gains if the integrative experience occurred only at the junior high school level. The experts also agreed that white students did not suffer an achievement loss in an integrated school setting. *See* R. Crain & R. Mahard, DESEGREGATION AND BLACK ACHIEVEMENT (1977), wherein seventy-three studies on the effect of desegregation on black achievement were reviewed. "A majority of these studies conclude that desegregation has a beneficial effect on black achievement test scores. * * * A comparison of the 73 studies leads to one important conclusion: that desegregation is noticeably more likely to have a positive impact on black test scores if it begins in the earliest grades, and effects are especially likely to be positive for first graders," *Id.* at Abstract. *See also* Pettigrew, Useem, Normand & Smith, *Busing: A Review of "The Evidence,"* THE PUBLIC INTEREST, Winter 1973, at 88.

[25]Dr. Orfield testified that

> to encourage cross-district transfers, * * * there [should] be * * * [a] right to transfer to vacant spaces in the suburbs and also positive educational alternatives [should be] built into the metropolitan area on a voluntary basis * * *.
>
> * * * *
>
> The major limitation is that voluntary transfer plans never have a broad system-wide effect, but [they] would * * * be important [and would] give an opportunity to more children * * * to [begin] to develop some kind of in[t]er-racial contacts with some of the suburban school systems.

positive educational components should be built into the plan; (5) that magnet schools and specialty schools should be continued and made available to both City and suburban students, but only as an adjunct to a comprehensive desegregation plan;[26] (6) that school personnel should be integrated at every level of employment and be assigned in a way that will not racially identify schools; and (7) that the community should be deeply involved in developing, explaining and policing the integration plan.

Dr. Orfield agreed with the Board of Education that an interdistrict remedy funded by the State of Missouri would have the best chance of permanently integrating the schools in the metropolitan St. Louis area.[27]

---

[26]Dr. Orfield testified:

> [A] Magnet School plan is a very feasible, workable approach to desegregation in a small city with a small ghetto or barrio [community] * * * .
>
> A Magnet School plan in itself has never been successful in desegregating a big city. It almost always produces no significant white transfers into predominantly black or Latino schools. * * * [I]t will not produce substantial desegregation without a compulsory plan backing it.
>
> * * * [I]t is valuable in desegregation because it builds in educational choice for parents, and * * * you ought to take advantage of it in any good desegregation plan * * * .
>
> * * * *
>
> * * * Milwaukee, for example, has desegregated about two-thirds of its schools * * * largely through voluntary transfers because parents know that if they don't transfer voluntarily they'll be reassigned.

[27]Dr. Orfield testified:

> [T]he most stable kind of plan is a metropolitan-wide proportional enrollment plan * * * .
>
> * * * *

2. *The constitutionally permissible alternatives.*

The plan proposed by the Board of Education will not effectively desegregate the public schools of St. Louis. It does little or

---

> Anything that can be done to involve the suburban districts should be done.

In *Milliken v. Bradley,* 418 U.S. 717, 744-745 (1974), the Supreme Court stated that, in order for an inter-district remedy to be appropriate,

> it must be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation.

St. Louis County suburban school districts, pursuant to state law prior to *Brown,* collaborated with each other and with the City of St. Louis to ensure the maintenance of segregated schools. *See* Act of April 9, 1917, 1917 Mo. Laws 498 (repealed 1957) (providing for the "Colored Consolidated High School District" of St. Louis County); Act of February 17, 1865, §13,1865 Mo. Laws 170 (repealed 1957) (providing, *inter alia,* for the inter-district transfer of "colored children"). Included among the pre-*Brown* practices of these districts was the assignment and transportation of black students living in the suburbs to black schools in the City. Moreover, as noted in Part VI of this opinion, governmental policies may have intensified segregation in the St. Louis area. *See U.S. v. Bd. of Sch. Com'rs of City of Indianapolis,* 541 F.2d 1211 (7th Cir. 1976), *vacated and remanded,* 429 U.S. 1068 (1977), *reconsidered,* 573 F.2d 400 (7th Cir.), *cert. denied,* 439 U.S. 824 (1978), *on remand,* 456 F.Supp. 183 (S.D. Ind. 1978); *Newburg Area Council, Inc. v. Board of Ed., Jefferson Cty., Ky.,* 489 F.2d 925 (6th Cir. 1973), *vacated and remanded,* 418 U.S. 918 (1974), *reconsidered,* 510 F.2d 1358 (6th Cir. 1974), *cert. denied,* 421 U.S. 931 (1975), *further proceedings sub nom. Cunningham v. Grayson,* 541 F.2d 538 (6th Cir. 1976), *cert. denied,* 429 U.S. 1074 (1977); *Evans v. Buchanan,* 393 F.Supp. 428 (D. Del.), *aff'd,* 423 U.S. 963 (1975), *further proceedings,* 416 F.Supp. 328 (D.Del.), *stay denied,* 424 F.Supp. 875 (D. Del.), *appeal dismissed,* 429 U.S. 973 (1976), *modified and remanded,* 555 F.2d 373 (3rd Cir.) (en banc), *cert. denied,* 434 U.S. 880 (1977), *on remand,* 447 F.Supp. 982 (D. Del.), *aff'd,* 582 F.2d 750 (3d Cir. 1978) (en banc), *petition for cert. filed,* 48 U.S.L.W. 3097 (U.S. Oct. 20, 1978) (Nos. 78-671, 78-672).

nothing to integrate grades one through six. Black elementary schools will remain black and white elementary schools will remain white. Further, the plan unnecessarily delays desegregation at the junior and senior high school levels—the junior high schools would be integrated over a four-year period, the high schools over a seven-year period. These time periods are simply unacceptable after a delay of twenty-five years. Similarly, the Board's tentative proposal to establish an Educational Park at the high school level is a futuristic solution to a current problem. While such an institution could serve as a useful component of an otherwise valid plan, the tentative proposal to open a park four years hence is inadequate to meet the constitutional requirement to desegregate now. In short, the Board's plan offers too little too late.

The Stolee plan would desegregate both the elementary and the secondary schools, at least temporarily. The district court found, however, that the probable result of the implementation of the plan would be an all-black school system in a few years. In light of this finding, we do not require that the Stolee plan be implemented, but the Board remains free to adopt the plan, or those portions of it, that meet the constitutional standards set forth herein.

Having made these observations with respect to the Board's plan and to the Stolee plan, we have no alternative but to remand to the district court with instructions to take those steps necessary to bring about an integrated school system in accordance with the guidelines and time tables set forth below:

> a. The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system.[28] In fulfilling this responsibility, the Board shall work with the par-

---

[28]The costs of the plan shall be apportioned among the defendants as determined by the district court. *See* Part VI of this opinion.

ties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court. The Board shall be required to submit to the district court its plan for integrating the school system within sixty days of the issuance of this Court's mandate. The district court shall promptly review the plan to ensure that it complies with the mandate of this Court. The plan shall be implemented no later than the beginning of the 1980-1981 school year under the direction of the district court.

(b) Voluntary techniques will not effectively desegregate the St. Louis school system. *See Liddell v. Caldwell, supra* at 772, note 8. The Board is, therefore, to be required to develop a system-wide plan for integrating the elementary and secondary schools of the district. On the basis of this record, two approaches appear to be constitutionally permissible and practical. *See Davis v. Board of School Commrs.*, 402 U.S. 33 (1971).

(1) *The Colton approach.* If this approach is to be followed, it must be modified so that all four tiers will be integrated. This modification may require an adjustment in the black-white ratios suggested by Colton.[29] Black students must be given a substantially equal opportunity to attend integrated schools during the years they attend the public schools.

(2) *The Orfield approach.* If this approach is to followed, the boundary lines and assignment patterns for schools that are presently integrated shall remain substantially as they are at present. *See United States v. School District of Omaha,* 521 F.2d 530, 546-547 (8th Cir.), *cert. denied,* 423 U.S. 946 (1975). For this purpose, a school with a black

---

[29]Compulsory attendance at the kindergarten level is not required. Students attending this grade need not be included in the plan.

enrollment of between 30% and 50% shall be considered to be integrated.[30] The student populations of these schools shall be maintained at as close to these percentages as is possible for a reasonable period not to exceed five years.[31] The remaining white schools (those more than 70% white) in the district shall be integrated with a sufficient number of black schools to achieve student populations that are not to be less than 30% nor more than 50% black. The student populations of these schools shall also be maintained at these percentages to the extent possible for a reasonable period not to exceed five years. The integration may be accomplished by those techniques that have been approved by the Supreme Court or this Court. The burdens of integration shall be borne as equally as possible by blacks and whites. *Davis v. Board of School Commrs., supra* at 37; *Swann v. Charlotte-Mecklenburg*

---

[30]The district court found that "stable integration in a particular school is generally achieved only when the percentage of blacks remains below 50%." *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1327. The expert testimony in this record indicates that the factors affecting the stability of an integrated school are numerous and vary from community to community. Among the important factors cited by the experts are: the availability and costs of other alternatives; the extent to which the integrated school system is supported by school administrators, faculty and community groups and leaders; and the quality of education offered in the integrated schools. On this record, we cannot disagree with the district court that a black student population at or below 50% in each school will contribute to the preservation of a racially unified school system in St. Louis.

The record also contains persuasive testimony that integration will be successful only if minority students are represented in numbers sufficient to reduce the feelings of racial isolation. While this number cannot be fixed precisely, we are convinced from this record as a whole that minority populations must be maintained at at least the 30% level.

[31]In view of the long period of racial discrimination in the St. Louis schools, a short period of mandatory stabilization is required to enable the desegregation plan to be effective. The time schedule imposed by this opinion is not a long-term "inflexible requirement." *See Pasadena City Bd. of Educ. v. Spangler, supra* at 434.

Bd. of Ed., supra at 25; *United States v. School District of Omaha, supra* at 547.

c. Each approach has its strengths and weaknesses. Unfortunately under either approach, some all or virtually all-black schools in North St. Louis will remain. The Board shall use other techniques to ensure students in all schools will receive equal educational opportunities. It shall seek the help of the state and federal governments in financing them.[32] These techniques may include the following:

(1) Developing and implementing compensatory and remedial educational programs. *See Milliken v. Bradley,* 433 U.S. 267 (1977).

(2) Developing and implementing programs providing less than full-time integrated learning experiences.

(3) Developing and implementing a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis county. The Board shall seek the cooperation of such school districts, the State Board of Education and the United States in developing and implementing such a plan. *See Liddell v. Caldwell, supra* at 774.

(4) Maintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education.

(5) Establishing an Educational Park.

(6) Continuing and expanding a policy of permissive transfers in the district.

---

[32]The consent decree required the parties to study the feasibility of curriculum improvements to improve the quality of education throughout the system. We require that this study be continued and that compensatory and remedial programs be instituted.

d. No inter or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school. *See Booker v. Special School Dist. No. 1, Minneapolis, Minn.*, 351 F.Supp. 799, 811 (D. Minn. 1972).

e. Transportation costs incurred pursuant to the provisions of an approved plan will be paid by the Board of Education.[33]

f. The consent decree, insofar as it pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated.

g. It shall be the responsibility of the district court to assure that "future school construction and abandonment are not used and do not serve to perpetuate or reestablish the dual system." *Swann v. Charlotte-Mecklenburg Bd. of Ed., supra* at 21. Accordingly, any construction of new schools, or addition to old schools other than that contemplated in the plan, shall be submitted to the district court for approval. *See Booker v. Special School Dist. No. 1, Minneapolis, Minn., supra* at 811.

h. The district court shall retain jurisdiction to ensure that the plan effectively integrates the entire St. Louis school system and to ensure that the plan is, in fact, being carried out. To assist the court in its monitoring function, the court's order should include reporting provisions requiring that reports on the operation of the plan be filed periodically with the court for a period of at least three years.

---

[33]We note that federal funds may be available to the school district to help defray the cost of this transportation under the Emergency School Aid Act. At oral argument, the State's attorney assured the Court that state aid would also be available and would pay up to 80% of the district's student transportation costs. *See* Mo.Ann.Stat. §163.161 (1979).

3. *Attorneys' fees.*

The Liddell group "and other intervening plaintiffs" requested that the district court allow them their costs and attorneys' fees. The record is unclear as to whether the Caldwell group was among those making such a request. The district court denied all of these requests, apparently on the theory than none of the plaintiffs prevailed below. *Liddell v. Bd. of Ed., City of St. Louis, Etc., supra* at 1366, 1390. Both the Liddell and Adams groups appeal this denial, claiming that they are entitled to attorneys' fees under 42 U.S.C. §1988. On the basis of our holdings on the merits, we affirm the denial as to the Adams group and reverse as to the Liddell group. On remand, the district court shall determine reasonable attorneys' fees for the Liddell group (and for the Caldwell group, if they requested them) in accordance with the general principles set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See also Cleverly v. Western Elec. Co.*, 594 F.2d 638 (8th Cir. 1979); *Brown v. Bathke,* 588 F.2d 634 (8th Cir. 1978).

The appellants requesting attorneys' fees on appeal shall submit a motion to that effect within thirty days of the filing of this opinion. Documentation of their claims shall be included. The appellees shall then be given fifteen days in which to file their objections to these motions.

Reversed and remanded for further proceedings consistent with this opinion. The mandate of this Court shall issue forthwith.

* * *

[Appendices to opinion omitted.]

Craton Liddell et al.,

Plaintiffs,

v.

The Board of Education of the City of St. Louis, Missouri et al,

Defendants.

No. 72-100C(C).

UNITED STATES DISTRICT COURT,

E.D. Missouri, E.D.

May 21, 1980.

Supplemental Findings of Fact and Conclusions of Law June 3, 1980.

ORDER

MEREDITH, District Judge.

This cause came to be heard pursuant to the remand, opinion, and order of the United States Court of Appeals for the Eighth Circuit handed down on March 3, 1980. After conferences with all counsel and a hearing on the Desegregation Plan filed by the defendant Board of Education of the City of St. Louis on May 2, 1980, and the Court, having considered the positions and objections of the parties, being duly advised in the premises, with findings of fact and conclusions of law to follow, it is hereby:

ORDERED, ADJUDGED AND DECREED that:

1. The defendant Board of Education of the City of St. Louis ("Board") shall not discriminate on the basis of race in the operation of its public schools.

2. The proposed plan of school desegregation submitted by the defendant Board on May 2, 1980, amended on May 8, May 12 and May 15, 1980, is hereby approved, with the modifications required by this Order, for implementation at the commencement of the 1980-81 school year. The Board is ordered to immediately undertake all steps necessary to the smooth and efficient implementation of the plan and shall operate its schools in accordance with the said Desegregation Plan and the further directions contained in this Order. No changes shall be made in the plan without the prior approval of this Court.

3. The defendant Board is hereby directed to keep the Adams school open and operating during the 1980-81 school year as a grade K-8 school. On or before January 1, 1981, the Board shall prepare and submit to the Court a proposal for the future use of the Adams school which includes a cost analysis for any renovation which may be necessary and an evaluation of the efforts necessary to maintain the Adams school as a stably integrated facility.

4. The Board's desegregation budget, as set forth in the Plan, is approved subject to the requirement that continued efforts be made to reduce the actual costs of implementation, but without impairing the quality of the Plan's components.

5. With respect to that part of the desegregation budget pertaining to pupil transportation costs, the Board and the State defendants are directed to investigate further ways to reduce the actual costs of pupil transportation and report to the Court on these efforts by June 16, 1980, with due regard being given to the safety of the children and the quality of service.

6. The defendant Board is authorized and directed to transfer the sum of $4,668,000 from its debt retirement account to the building and renovation account to be applied to such building modifications as are needed to expand the magnet schools and achieve the conversion to the grade configuration described in the Desegregation Plan.

7. The State of Missouri is ordered to fund one-half of the cost of implementing and operating the Board's Desegregation Plan; in no event shall the State be required to pay more than $11,076,206 which is one-half of the Desegregation budget herein approved by the Court for the school year 1980-1981. In the subsequent years, as long as the Plan remains in effect, the State shall pay one-half of the cost of desegregation, subject to such adjustments as the Court may deem necessary or proper. The sum ordered to be paid herein will include the additional dollars for transportation requested in the Desegregation budget. Payments shall be made in four equal installments at the same time as regular payments. No payment by the State for this purpose shall be made from the school Foundation Program. Any amounts overpaid will be refunded to the State or credited on the next payment. Payment by the State to the Board of Education of the City of St. Louis for the costs of the Desegregation Plan shall be in addition to the payments heretofore made by the State to the said Board, as well as any increase in those sums as the Board would have received absent this Order. The State is directed to report to the Court by July 1, 1980, the amount of funds available and when they will be paid.

8. The defendant Board is applying to the United States Department of Education for funds under ESAA which will be used to offset the cost of certain components of the Desegregation Plan. The said Department of Education is required and urged to expedite the processing of these applications of the Board in order to assist the Board in complying with the mandate of the Eighth Circuit and the requirement therein stated that the Plan be implemented no later than the beginning of the 1980-81 school year. The Department is requested to report about its action hereunder by July 1, 1980.

9. The defendant Board shall continue the study of the feasibility of curriculum improvements to improve the quality of education throughout the system.

10. The defendant Board shall continue to study and evaluate the compensatory and remedial educational programs described in the Desegregation Plan and shall recommend for approval by the Court such modifications and improvements as will appear advisable and proper to achieve the goals stated by the appellate court.

11. No inter- or intra-district permissive transfer shall be permitted which will increase the segregated nature of either the sending or receiving school.

12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

d) To develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

e) To develop and submit a plan to the Court by July 1, 1980, which expands programs and schools so that all the schools in the City of St. Louis may be eligible for Title I funding for the year 1980-81 under Title I of the U.S. Elementary and Secondary Education Act of 1965.

13. The defendant Board shall assign its faculty and staff in accordance with the following provisions:

All principals, teachers, and other certificated staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for black students or white students. Commencing with the 1980-81 school year, and continuing yearly thereafter for the period inclusive of 1984-85, the Board shall assign the staff described above so that the ratio of black to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system. For the purpose of this provision, "substantially the same" means within plus or minus five percentage points of the respective ratio in the entire school system or two individuals, whichever is more.

The same criteria shall apply to non-certificated personnel.

The Board shall, to the extent necessary to carry out its Desegregation Plan, direct members of its staff, as a condition of continued employment, to accept new assignments.

14. On October 30, 1980, on March 31, 1981, and on the same dates annually thereafter until further order of the Court, the Board shall file with the Court a report setting forth the following information:

(a)(i) The number of students by race enrolled in the school district;

(ii) The number of students by race enrolled in each school of the district;

(iii) The number of students by race enrolled in each classroom in each of the schools in the district as well as the race of the teacher in each such classroom.

(b)(i) The number of full-time teachers by race in the district;

(ii) The number of full-time teachers by race in each school in the district;

(iii) The number of part-time teachers by race in the district;

(iv) The number of part-time teachers by race in each school in the district.

(c) Descriptions of the requests and the results which have accrued, by race, under the majority to the minority transfer provision which is a part of the Plan.

(d) Statement of the number of permissive transfers granted since the Plan became effective, the race of the students who were granted such transfers, and the school district to which the transfers were allowed.

(e) Brief description of any present or proposed construction or expansion of facilities.

(f) Statement whether the Board has sold or abandoned any school facility, equipment, or supplies having a total value of more than $500.00 since the Plan became effective.

15. All construction of new schools, additions to old schools, closing of existing schools, sales or leases, shall be submitted to this Court with notice given to all parties, and shall not be carried out without prior approval of this Court.

16. A broadly based Monitoring Committee of citizens residing in the City of St. Louis will be appointed by the Court to assist in the implementation of the Desegregation Plan, providing an ongoing review, reporting all the aspects of the Plan, identifying aspects requiring special attention and making recommendations to the Board with regard to any such matter. The Monitoring Committee will have full access to the Board and to the Court and shall report to the Court on a regular basis.

17. Dr. Gary Orfield, who has assisted so well this Court in connection with the Desegregation Plan, shall continue to assist this Court as its expert with regard to the implementation phase and further will provide assistance to the Monitoring Committee and to the parties particularly in connection with the plan of inter-district cooperation and the development of a vocational program for city and county combined. The expenses and fees for these services shall be paid one-half by the State and one-half by the Board.

18. Defendant Board shall seek the assistance of civic groups, including business, labor, religious, and parents' groups, in informing the community of the essential facets of the Desegregation Plan and enlisting the maximum public support of all sections of the community to insure a smooth and effective operation of the Plan. All persons concerned shall be guided by the consideration that the widest acceptance by the community is essential to the success of the Plan.

19. The Court will not grant any stay of this Order.

20. The Court retains jurisdiction of this action to ensure that the provisions of this Order are effectively being carried out.

SUPPLEMENTAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

These Findings of Fact and Conclusions of Law supplement the Court's Order of May 21, 1980, filed on that day.

Findings of Fact

1. On March 3, 1980, the United States Court of Appeals for the Eighth Circuit issued an opinion reversing the opinion filed by this Court, remanding it to this Court and ordering a plan of desegregation to be filed within 60 days. The opinion of the Court of Appeals placed primary responsibility for drawing this plan with the Board of Education of the City of St. Louis. This Court immediately requested the attorneys for all parties to meet together on Thursday, March 13, 1980, and to meet with the Court on Friday, March 14, 1980, in order to consider ways and means of implementing the mandate of the U.S. Court of Appeals.

2. The Court met with the attorneys on Friday, March 14, 1980, after they met together on March 13, and appointed a group of 20 citizens of the City of St. Louis, 10 white and 10 black, to form a Citizens Committee from those names suggested by the lawyers. The Court selected as chairman of the Citizens Committee Edward T. Foote, Dean of the Law School of Washington University. This Committee worked without compensation. The Citizens Committee met on March 21, 1980, with the Court and with Milton Lewis, Regional Director of the Community Relations Service of the Department of Justice; Dr. Albert L. Walker, Assistant Commissioner of Education of the Department of Education of the State of Missouri; and Dr. Robert Wentz, Superintendent of the Board of Education of the City of St. Louis, all of whom had members of their staffs present, and Dr. Gary Orfield, who had been appointed as the expert by the Court. All members of the Citizens Committee and Dr. Orfield had been sent copies of the opinion of the United States Court of Appeals for the Eighth Circuit in this cause and were familiar with its contents. The Committee met in constant session for five days a week from March 21, 1980 through May 1, 1980. There was a constant flow of information from the School Board's committee and from Dr. Orfield to the Citizens Committee. This Committee had a great input on the Plan

drawn by the School Board, received input from the community, and did an excellent job. The Committee selected Charles Brown to serve as vice-chairman and Anita Bond to serve as secretary.

3. The defendant Board of Education of the City of St. Louis, within a few days of the receipt of the opinion, order, and mandate of the appellate court, concluded that no review of the appellate court decision should be sought. It established an internal committee of 14 administrators, teachers, and other personnel who remained in constant session until the final plan was filed on May 2, 1980. In the course of their investigation and assembling of data, five members of the internal committee visited the school districts of Milwaukee, Louisville, and Columbus, Ohio. Tentative plans were filed from time to time between March 3, and May 2, 1980. Copies of these plans were furnished to Dr. Gary Orfield, the Citizens Committee, and were published in the daily newspapers and the television media for the purpose in informing the citizenry. The School Board Plan was unanimously approved by all twelve members of the Board of Education of the City of St. Louis. Dr. Orfield approved the Plan with minor recommendations, and on May 8, 1980, the Board of Education of the City of St. Louis accepted Dr. Orfield's recommendations and filed an amendment to the Plan on May 8, 1980.

4. The Citizens Committee filed a report with the Court. Some of its suggestions had been adopted by the School Board; some had not. Dr Orfield filed a report with the Court. The United States, which had intervened as a party plaintiff, supported the amended Desegregation Plan.

5. The Board of Education of the City of St. Louis considered all the plans described in the opinion of the Court of Appeals and concluded that neither the Stolee nor the Colton Plan was appropriate in the St. Louis situation. The Court of Appeals found that based upon the evidence, an interdistrict remedy has

the best chance of permanently integrating the schools in the metropolitan St. Louis area. All parties and this Court generally agree with this proposition.

6. This Court has heretofore made a finding in its original opinion that implementing the Stolee Plan would result in an all black system in a few years. Because of this finding the Eighth Circuit did not require that the Stolee Plan be implemented.

7. The Colton Plan was found by the Eighth Circuit to be in part constitutionally defective. In addition, its application to the enrollment composed of 76 percent black and 24 percent white students would allow black students to spend only a few years in an integrated school with the balance of their education required to be spent in segregated schools. This Court finds, based on the evidence, that transferring students from an integrated school to a one-race school, as advocated in the Colton Plan, would have a detrimental effect upon students and would be educationally unsound. It also would fail to achieve effective desegregation.

8. The Orfield approach was found to be permissible by the Eighth Circuit. The School Board also selected certain features of the Colton approach in its Plan. The Court of Appeals in its opinion found that a school with a black enrollment between 30 and 50 percent shall be considered to be integrated and that with the system which has a ratio of 76 percent black and 24 percent white students this compels the continuing existence of some all black schools.

9. The cost of implementing the Desegregation Plan in the St. Louis public schools is estimated to be $22,152,413 for the 1980-81 school year. This figure is in excess of the normal budget which exceeds $125,000,000 annually plus $33,000,000 received from federally funded programs. Based on the testimony before the Court, the Court finds the additional $22,152,413 to be a reasonable figure for the cost of implementing this Plan.

10. The State of Missouri, through the Department of Education, testified that under its regulations it pays 80 percent of transportation costs. However, the maximum cost it will pay is 125 percent of the average cost throughout the entire State of Missouri, which includes rural schools, and the cost of transportation in the City of St. Louis is about twice the cost of transportation in other places in the state. Under these circumstances, the amount the State of Missouri will pay for transportation is considerably less than half of the cost of transportation in St. Louis. For example, the cost of transporting a student every day throughout the school year in St. Louis is $515 per year. The statewide average is $147 per student per year. The State will only pay 125 percent of $147. The cost in Kansas City is $249 per student per year. This Court in its Order has requested the State of Missouri, the St. Louis School Board, and the United States to examine transportation costs to see if they can be reduced and to report to the Court by June 16, 1980.

11. The components of the Desegregation Plan are educationally sound and satisfy the requirements of the opinion, decree, and mandate of the Court of Appeals with regard to integrating the enrollment in the schools through the adoption of clustering in the elementary schools and by reassignment and transportation in the high schools. Existing magnet schools will be continued and six new magnet schools added. A variety of specialty programs will be offered to all students in the district. Development and enrichment programs, which will include remedial and compensatory features but will not be limited to students with low achievement test scores, will be offered in those schools in North St. Louis which cannot be integrated because of heavy imbalance in the racial composition of the enrollment in the district. Further, the Plan sharpens the provisions applicable to permissive transfers and encourages broader use of this technique, commits the efforts of the Board to seek and develop interdistrict plans of voluntary cooperation with school districts of St. Louis County, adopts a "Singleton" type

faculty assignment plan, provides for regular reporting to the Court, monitoring of the Plan, and citizen participation in the implementation stage. The Court finds that these provisions comply with the requirements of the mandate of the Eighth Circuit and that they constitute a sound and reasonable response to that mandate. Indeed, all of the improvements in the instructional area, including the conversion to middle schools, will assist in remedying the educational deprivations which resulted from the dual system which the Court of Appeals found to have existed. In addition, these improvements in the quality of education will encourage students, both black and white, to remain in the system.

12. The State of Missouri, which together with State officials and the State Board of Education was joined as a defendant, is jointly and severally liable with the defendant Board for the costs pertaining to the Desegregation Plan. The State of Missouri, which prior to 1954 mandated school segregation, never took any effective steps to dismantle the dual system it had compelled by constitution, statutory law, practice and policy. The State of Missouri is liable for the de jure segregation which existed in the St. Louis Public Schools. Thus, as recognized in the Court of Appeals opinion, it is within the equitable power of this Court to require the State to pay a portion of the costs of desegregation. In the light of the financial position of the district, the nature of the violations committed by the parties, and all the appurtenant circumstances, it is appropriate that the State be required to pay one-half of the total costs to implement the Desegregation Plan for the public schools of the City of St. Louis.

13. For the school year 1980-81 these desegregation costs are estimated to amount to $22,152,413 and the State share of these costs is $11,076,206. Any part of said sum of $11,076,206 which is not expended by the Board for the purposes of the Desegregation Plan should be refunded by the Board to the State. Further investigation should be undertaken by the defendants to deter-

mine whether the cost of pupil transportation may be reduced without adverse effect upon the safety of the children and the quality of service. The State should have discretion in the determination of the source or sources of the State funds with which to pay its share of the costs except that no payment for this purpose should be made from the school Foundation Program, which is essential to the operation of all school districts throughout the state.

14. The other 50 percent should be paid by the Board from the following sources: The Board has funds available in the building service fund which was established for the retirement of bonds heretofore issued for the purpose of purchasing, erecting, furnishing and repairing school buildings. As of June 30, 1980 there will be in said fund an excess balance which will make it possible, without jeopardizing the district's ability to meet its bond repayment objectives, to apply the sum of $4,668,000 to the payment of the building modifications which are needed to expand the magnet and other alternative schools and achieve the conversions to the grade configuration described in the Desegregation Plan. The sum necessary to provide the remaining funds needed should consist of the federal funds which the Board should receive under the ESAA program and under other federal programs pertaining to providing financial assistance for the desegregation of the public schools.

15. The Board has received substantial funding under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 241a *et seq.*) for the last several years. Title I is a program of federal financial assistance which provides funding for remedial programs in schools with concentrations of students from economically disadvantaged backgrounds. During the 1979-80 school year 118 of the 134 schools in the St. Louis school system were eligible for Title I programs. The 16 schools which did not have sufficient concentrations of low income students to qualify under Title I were all located in effectively all-white areas of the City. Under the Board's Plan each of these sixteen schools will either be closed or desegregated.

It is important that students and schools previously eligible for Title I programs not be deprived of the benefits of those programs because of the implementation of a school desegregation plan. Every effort should be made to maximize the number of Title I eligible schools within the statutory framework of Title I.

16. Considering the school closings, number of students transported, distance of transportation, and other facets of the Desegregation Plan of the Board taken as a whole under all the circumstances present here, the burden of desegregation will be borne as equally as possible.

17. The existing dual system of vocational education split between the City and St. Louis County is neither educationally sound nor administratively efficient. These systems, established in 1965 and 1967, are further evidence of the continuing failure of the State to take any effective measures to disestablish the dual system in the State. The State has the power to effectively merge these systems. Its failure to exercise that power is part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated.

18. As the Court of Appeals noted, "many factors . . . including actions of the state and federal government, have intensified racial segregation in North St. Louis." It is critical that future actions in the housing area of all government bodies, federal, state and local, facilitate and not hamper school desegregation. Given the past history of federally assisted housing programs in the St. Louis area, it is necessary that a specific plan to facilitate and not hamper school desegregation be developed by the appropriate government bodies.

19. The Adams school shall remain open and operating for a period of one year during the 1980-81 school year as a grade K-8 school on an experimental basis.

Conclusions of Law

1. In the pending proceedings on remand of this cause pursuant to the opinion, decree, and mandate issued by the United States Court of Appeals for the Eighth Circuit on March 3, 1980, the issue for adjudication by this Court is whether or not the Desegregation Plan submitted by the defendant Board of Education of the City of St. Louis on May 2, 1980, as amended, meets the requirements set by the appellate court in its aforesaid opinion, decree, and mandate.

[1] 2. Upon examination of the Desegration Plan filed by the Board as aforesaid, and having considered the report of the Court's expert, Dr. Gary Orfield, filed herein on May 5, 1980, and the evidence adduced by the parties, it is the conclusion of this Court that the said Desegregation Plan, as amended, meets the requirements of and complies with the opinion, decree, and mandate of the Eighth Circuit and is sound and feasible under the circumstances. It should also be noted that the United States, which intervened in this cause at the request of this Court pursuant to the suggestion of the appellate court, and took the position of plaintiff intervenor, directly supported the Board's Desegregaton Plan, as amended, as being in compliance with the mandate of the Eighth Circuit.

3. The Court recognizes that the Board's Plan, although it conforms to the Court of Appeals' mandate, will not provide a fully desegregated education for every black child in the school system. However, the Board's Plan, developed under the Orfield approach, holds the promise of providing the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation," *Davis v. Board of School Commis,* 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971). Included in the "practicalities" of this case is the current absence of suburban school districts amongst the parties of record. No suburban school district is now a party to this case and none can be ordered to participate until its rights have been adjudicated.

4. The Board in its plan has proposed a "Singleton" type faculty assignment plan. *See Singleton v. Jackson Mun. Sep. Sch. Dist.*, 419 F.2d 1211, 1217-18 (5th Cir. 1970). Such plans have been universally recognized as an appropriate method of eliminating the racial identifiability of school facilities in a desegregation school system.

[2] 5. The post-*Brown* Fourteenth Amendment obligation of a State that has operated a legally imposed racially dual school system is clear. *See, e.g., United States v. State of Missouri*, 363 F.Supp. 739, 747 (E.D.Mo.1973), *aff'd in relevant part*, 515 F.2d 1365 (8th Cir. 1975), *cert. denied*, 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975):

> A state, such as Missouri, which has in the past operated a racially dual system of public education, pursuant to state constitutional and statutory requirements [*and continuing policy, practice, custom and usage*] is, and has been since 1954, under an additional constitutional obligation to take such affirmative measures as are necessary to disestablish that dual system and eliminate the continuing vestiges of that system. (Emphasis added.)

Upon the decision in *Brown II*, 349 U.S.294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), it became the constitutional duty of the defendant State of Missouri to obliterate all vestiges of such state-imposed segregation. This obligation, as fleshed out in *Brown II*'s progeny, required the state "to do more than abandon its prior discriminatory" conduct. *Dayton Bd. of Educ. v. Brinkman*, 443, U.S. 526, 538, 99 S.Ct. 2971, 61 L.Ed.2d 720 (1979) (*Dayton II*). Rather, the State, and, upon its default, now the Court, has the duty "[to] eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154, 85 S.Ct. 817, 822, 13 L.Ed.2d 709 (1965). *See also Dayton II, supra; Columbus Bd. of Educ. v. Penick*, 443, U.S. 449, 458-61, 99 S.Ct. 2941, 61 L.Ed.2d 666 (1979); *Milliken v. Bradley*, 433 U.S. 267,

97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) (*Milliken II*); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and companion cases; *Green v. County School Bd.*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), and companion cases. As the Supreme Court squarely held in *Milliken II, supra,* the Fourteenth Amendment requires responsible "state officials . . . to take the necessary steps 'to eliminate from the public schools all vestiges of state-imposed segregation.'" 433 U.S. at 289-90, 97 S.Ct. at 2762.

[3] 6. In sum, the State defendants stand before the Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty. Their efforts to pass the buck among themselves and to other state instrumentalities must be rejected:

> The State cannot escape responsibility for the racial discrimination disclosed in this case or the obligation to correct the effects of such discrimination by neatly compartmentalizing the authority and responsibilities of its various instrumentalities and then contending that no single instrumentality is wholly responsible for the unlawful segregation or has the power to correct the unlawful segregation.

United States v. State of Missouri, supra at 748. Since "[t]he primary responsibility for insuring a constitutional structure of public education is the state's, . . . it is appropriate for the Court to order the state" to affirmatively participate in remedial efforts, *id.* at 749, including the provision of funding, to the extent necessary, for the desegregation efforts ordered by the Court. *See, e.g., Milliken II, supra; United States v. Missouri, supra; Evans v. Buchanan,* 447 F.Supp. 982 (D.Del.), *aff'd,* 582 F.2d 750 (3d Cir. 1978), *cert. denied,* ____ U.S. ____, 100 S.Ct. 1862, 64 L.Ed.2d 278 (1980).

7. The State of Missouri defendants have been found and held liable with the Board of Education of the City of St. Louis for the segregated conditions in the St. Louis public schools. The State should bear an appropriate share of the cost of implementing the Desegregation Plan. *Milliken v. Bradley,* 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). *See also, United States v. State of Missouri, supra; Evans v. Buchanan, supra,* and *United States v. Board of School Commissioners,* 456 F.Supp. 183, 191-192 (S.D.Ind.1978), *aff'd,* No. 78-1800 (7th Cir., April 29, 1980).

APPENDIX H

CONSTITUTION OF THE UNITED STATES

Article I

THE LEGISLATIVE DEPARTMENT

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

* * *

Section 8. The Congress shall have power: To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

* * *

Article III

THE JUDICIAL DEPARTMENT

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority;

* * *

Article IV

Section 4. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or of the executive (when the legislature cannot be convened), against domestic violence.

Article VI

* * *

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

* * *

Amendment IX

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

28 U.S.C. § 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

CONSTITUTION OF MISSOURI

Article X

TAXATION

Section 16. Taxex and state spending to be limited—state to support certain local activities—emergency spending and bond payments to be authorized. Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval as provided by this constitution. The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in sections 17 through 24, inclusive of this article.

Section 22. Political subdivisions to receive voter approval for increases in taxes and fees—rollbacks may be required—limitation not applicable to taxes for bonds. (a). Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon. If the definition of the base

of an existing tax, license or fees, is broadened, the maximum authorized current levy of taxation on the new base in each county or other political subdivision shall be reduced to yield the same estimated gross revenue as on the prior base. If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the general price level from the previous year, the maximum authorized current levy applied thereto in each county or other political subdivision shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the general price level, as could have been collected at the existing authorized levy on the prior assessed value.

TAXATION—SCHOOL DISTRICTS

HOUSE BILL NO. 310

AN ACT

To repeal section 52.260, RSMo 1978, and sections 144.701, 163.087 and 164.013 of an act proposed by initiative petition and submitted as proposition C and approved by vote of the people of the state at the general election held November 2, 1982, for the purpose of adjusting and clarifying provisions of law relating to moneys for schools, and to enact in lieu thereof five new sections relating to the same subject, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

* * *

144.701. 1. The revenue derived from the rate of one cent on the dollar of the tax imposed by sections 144.010 to 144.430 and sections 144.600 to 144.745 which shall be deemed to be local tax revenue, shall be deposited by the state treasurer in a special

trust fund, which is hereby created, to be known as the "School District Trust Fund." The money in the fund shall be distributed to the public school districts of the state in the manner provided in section 163.087, RSMo, and shall be appropriated and used

* * *

163.087. 1. Money in the school district trust fund shall be distributed to each six-director, including special districts, urban and metropolitan school district in the state in the same ratio that the number of eligible pupils in the district bears to the total number of eligble pupils in all such school districts for the preceding year. As used in the preceding sentence, the term "eligible pupils" has the meaning ascribed to it in section 163.011, RSMo. In addition, each such district which is providing an approved program for pupils residing on federal lands shall receive an amount which shall be determined as follows: An eligible pupil count for pupils residing on federal lands shall be calculated separately for the district in the manner provided in section 163.011, treating such pupils as residents of the district for this purpose. Such eligible student count shall be multiplied by one-half of the amount to be received by the district per eligible pupil not residing on federal lands.

* * *

3. Money received by a school district from the school district trust fund shall be deemed to be local tax revenue derived for the same fiscal year in which the money is received, for the teachers, incidental and building funds and may be deposited to such funds of the district in such proportions as the school board determines provided a minimum of seventy-five percent of one-half of such funds received shall be deposited in the teachers fund. The reduction in the operating levy pursuant to section 164.013, RSMo, shall be made proportionally in the funds where the remaining one-half of the money from the school district trust fund is deposited. In the calculation of state

aid for the district under the provisions of section 163.031, RSMo, fifty-seven percent of one-half the amount received by the district in the first preceding year shall be deducted from the minimum guarantee in the same manner that is prescribed in such section for deduction from the amounts received by the district from fines, forfeitures, escheats and intangible taxes.

164.013. Each year in which the revenue from the rate of one cent on the dollar of the state sales is collected for distribution under the provisions of section 163.087, RSMo, the school board of each six-director, including special districts, urban and metropolitan school district, after determining its budget for the school year and the rate of levy needed to produce the required revenue as provided in section 164.011, and after making any other adjustments to the levy that may be required by any other law, shall reduce the total operating levy in an amount sufficient to decrease the revenue it would have received therefrom by an amount equal to fifty percent of the estimated sales tax revenue excluding the sales tax revenue estimated to be received by the district attributable to pupils residing on federal lands and excluding the amount of sales tax revenue estimated to be necessary to offset the loss of property tax revenue to the school district under the provisions of section 2 of this act. Loss of revenue from state assessed railroad and utility distributable property shall be considered in lowering the rate of levy to comply with this section. In the event that in the immediately preceding year the school district actually received more or less sales tax revenue than estimated, the school board shall adjust its operating levy for the current year to reflect such increase or decrease. Adjustments in the tax rate of a school district pursuant to the provisions of this section shall in no way affect the eligibility of claimants for benefits, or the amount of claimants' benefits, under the provisions of sections 135.010 to 135.035, RSMo. Such claimants shall, if they are otherwise qualified, receive the benefits to which they were or would have been entitled in the year prior to the effective date of this act. There shall be transferred from the school district trust fund to the

general revenue fund an amount equal to the difference in the amount paid or credited or which would have been paid or credited to individuals qualifying under sections 135.010 to 135.035, RSMo, in the year prior to the effective date of this act and the amount paid or credited under the provisions of such sections each year thereafter. The director of revenue shall certify the amount payable from the school district trust fund to the general revenue fund to the state treasurer, the commissioner of administration and the state board of education on or before the first day of each month. Any school district required to reduce its total operating levy under the provisions of this section shall not become ineligible for state aid under the provisions of section 163.021, RSMo, because of such required reduction. In the event a district fails to reduce its operating levy in compliance with this section, an amount equivalent to the amount by which the district fails to reduce its levy shall be deducted from the district's apportionment of state aid under the provisions of section 163.031, RSMo, for the following year.

* * *

83 - 1386

No.

Office - Supreme Court, U.S.
FILED
FEB 21 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, etc., et al.
Respondents.

On Petition for Writ Of Certiorari To The
United States Court of Appeals for the Eighth Circuit

APPENDIX
Volume II

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

TABLE OF CONTENTS

		Page
I.	Interim Orders of Court of Appeals	A-351
J.	Orders of District Court Relating to Taxes and Budgets	A-363
K.	February 8, 1984 Opinion of Court of Appeals	A-406

APPENDIX I

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1957

Craton Liddell, et al,
Plaintiffs/Appellees,

v.

State of Missouri, et al,
Defendants/Appellants.

Appellant's Application for
Stay; Separate Stay Requested
by St. Louis County.

No. 83-2118

Craton Liddell, et al,
Plaintiffs/Appellees,

v.

City of St. Louis,
Plaintiff-Intervenor/Appellant.

Appeal by City of St. Louis;
Application for Stay by
St. Louis County.

No. 83-2140

In Re: City of St. Louis, Paul Berra and Ronald A. Leggett,
Petitioners.

Petition for Writ of Prohibition.

Submitted: September 2, 1983

Filed: September 13, 1983

Before LAY, Chief Judge, and HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG and BOWMAN, Circuit Judges. *EN BANC.*

ORDER

The State of Missouri and St. Louis County have filed applications for a stay pending appeal in opposition to a voluntary desegregation plan recently approved by the district court for the St. Louis area schools. The City of St. Louis has filed a petition for a writ of prohibition against the plan. Two objections are raised: (1) the plan imposes an interdistrict remedy based on intradistrict violations, and (2) the plan's provisions calling for the district court to exercise authority over school tax rates under certain contingencies conflicts with the principle of separation of powers. For the reasons discussed below, we deny the applications for the stay subject to the exceptions noted, and reserve a ruling on the petition for the writ of prohibition until we hear the appeals on the merits. We express no opinion on the merits of the serious questions raised on appeal at this stage of the proceedings.

BACKGROUND

On July 5, 1983, the United States District Court for the Eastern District of Missouri approved a settlement plan calling for the further desegregation of St. Louis schools. The plan had previously been approved by the Liddell plaintiffs, the Caldwell plaintiffs, the City Board of Education, and by all twenty-three suburban school districts in St. Louis County.

The plan provides for voluntary interdistrict transfers between city and suburban schools, and includes incentives to encourage these transfers. It calls for improvement in the quality of education in the city schools, and the establishment of additional magnet schools to attract suburban white students to the city schools. It requires additional special educational improvements in the all-black schools.

The plan further provides that the state will be responsible for the costs of the voluntary interdistrict transfers, the magnet schools, and various part-time and alternative integrative pro-

grams, plus one-half the cost of the programs to improve the quality of education in the city schools, and one-half the cost of the capital improvements required to carry out the plan. The state is to match equally any amount raised for capital expenditures through a voter-approved bond issue to be held prior to February 1, 1984.[1] The City Board is required to pay the remaining costs.

The plan also provides that the school tax rate reduction pursuant to state law (Proposition C) will be deferred to help fund the Board's share of implementation costs. If the city still does not have sufficient revenues to implement the plan, the plan provides that "the court will enter an appropriate order, following notice and an opportunity to be heard on the amount, to increase the property tax rate in the City of St. Louis by an amount necessary to fund the city board's share of the costs of the settlement plan."[2]

---

[1] The district court's financial adviser found that an existing debt service levy of $ .17, scheduled to be retired in February, 1984, could support a new $20 million bond issue amortized over twenty years without an increase in property taxes.

[2] The voluntary plan emerged after months of intensive negotiations, directed by court-appointed experts, and participated in by the Liddell, Caldwell, and City Board plaintiffs, and by all twenty-three St. Louis County school districts. An agreement was finally reached after the district court disclosed, in an August 6, 1982, order, the plan it would implement in the event the parties were unable to agree to a voluntary plan and the suburban school districts were found liable for constitutional violations. The district court's proposed plan essentially called for one unified metropolitan school district divided into four subregions with a uniform tax rate, and a metropolitan-wide student transfer transportation system.

The district court had originally set February 14, 1983, as the date for trial on interdistrict liability, but postponed this trial from time to time to allow the parties the opportunity to resolve their differences.

The plan is currently being implemented. School opened in several suburban districts prior to Labor Day and opened in the remaining suburban districts on September 6 and in the city schools on September 7.

DISCUSSION:

The Motion for a Stay

We noted the applicable standards for granting a stay pending appeal in *Reserve Mining Co. v. United States,* 498 F.2d 1073, 1076-1077 (8th Cir. 1974). After a careful review of the record, the applications for a stay, the opposition briefs, and oral argument, we are convinced that the applications should be denied with the exceptions noted below.

The controlling factor in our judgment is the public interest. When the public interest is weighed in conjunction with the harm to the appellants and the appellees, we feel it would be improvident to grant the stay.

First, the timing of the applications suggests we not exercise our discretion in favor of issuing a stay. The settlement plan was approved by the district court on July 5, 1983. Motions for a stay were filed in district court by the state and St. Louis County on July 26 and August 8, respectively. The time has simply been inadequate to permit the thorough consideration this matter requires. We will hear the matter en banc on the merits in November. By that time, the parties will have fully briefed the matter and we will have had the opportunity to consider thoroughly the record and the briefs.

Second, the school districts have already begun to implement the voluntary plan. Issuance of a stay would necessitate reassigning students and teachers, discontinuing student transportation to county schools, and revising administrative decisions concerning budgeting, orientation, and hiring. The lives of thousands of students and teachers would be disrupted before this Court had decided the matter on the merits.

The exceptions to our denial of the stay order are as follows:

(1) Paragraph 5(e) of the district court's July 5, 1983, order provides:

> (e) the State of Missouri shall pay in full the costs of transportation of the interdistrict transfer students; the reasonable, actual costs to implement incidental programs, such as the student recruitment efforts, any community involvement centers, the Voluntary Interdistrict Coordinating Council (VICC) and its staff, the Recruitment and Counselling Center and its staff and offices, and parent involvement programs; and reasonable attorney's fees that may be awarded to the prevailing plaintiffs City Board, Caldwell, and Liddell.

The provisions of paragraph 5(e) may be implemented as ordered, with the exception that the city and suburban school districts shall not further recruit or accept interdistrict transfer pupils other than those who have indicated an intention to transfer prior to the date of issuance of this order.

(2) Paragraphs 6(b) and (c) of the district court's July 5, 1983, order provide:

> (b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools;
>
> (c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court will consider an appropriate order to obtain the funds deemed sufficient to meet the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools[.]

The vote on the bond issue referred to in paragraph 6(b) may proceed as scheduled. If the issue receives the required voter approval, the bonds may be issued. If it fails to receive voter approval, the district court shall defer further consideration of or action on any alternative measures to meet the capital needs of the City Board with respect to desegregation until further order of this Court.

(3) Paragraphs 6(a), (d), (e) and (f) provide as follows:

> (a) the City Board shall certify to the Court, on or before July 15, 1983, the amount needed to meet its share of the reasonable actual costs of implementing programs pursuant to the Settlement Plan, as approved, as well as the tax rate necessary to fund these costs;
>
> * * * *
>
> (d) the City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis as of July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Proposition C. The amount of revenue retained by the City Board by reason of not reducing its operating levy shall be utilized to fund the implementation of programs needed to meet City Board's consitutional obligation to desegregate the City's public schools pursuant to the Settlement Plan, as approved. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984;
>
> (e) in the event the above funding orders fail to provide the necessary funds, the Court will consider an appropriate order, following notice and an opportunity to be heard on the amount, to increase the City Board's property tax rate by an amount reasonably necessary to fund the City

Board's share of the costs of implementing the Settlement Plan programs pursuant to City Board's consitutional obligation to desegregate the City's public schools; and

(f) in its discretion, City Board may use other sources available to it to fund its share of the programs implemented pursuant to the Settlement Plan, as approved. To conform this order with the prior decree of the Eighth Circuit, *Liddell, supra,* 677 F.2d at 631, any outside funds received by City Board for the purpose of implementing these programs may first be applied to reduce the City Board's share of the costs of the programs and then applied to reduce the State's share of the costs of the programs.

The Board has thereto made the certification required by paragraph 6(a). The provisions of paragraph 6(d) may be implemented as ordered. The provisions of paragraph 6(e) may be implemented as ordered, but the district court shall not issue any order increasing the City Board's tax rate until further order of this Court. The provisions of paragraph 6(f) may be implemented as ordered.

The Petition for Writ of Prohibition

We defer action on the writ of prohibition until such time as we consider the appeals that have been filed on the merits.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-1957

Craton Liddell, et al,
Appellees,

v.

State of Missouri, et al,
Appellants.

On State Appellants'
Application for Limited
Stay.

Filed: September 30, 1983

Before LAY, Chief Judge, and HEANEY, BRIGHT, ROSS, McMILLIAN,ARNOLD, JOHN R. GIBSON, FAGG and BOWMAN, Circuit Judges, En Banc.

ORDER

The motion of state appellants to stay appellees from instituting any of the provisions of Section IV, Quality Education, including the Appendix and Exhibit 2 as approved by the district court in paragraphs 1 and 2 of its order [H(2503)83] is denied.

The motion of the same parties to stay the implementation of paragraph 6(b) of the district court's order [H(2503)83], requir-

ing the City Board to submit to its voters a bond issue for capital improvements, is denied.

The motion of the same parties to stay further transfer of students is granted insofar as the transfer of students residing in the City District to the County District are concerned. Other pending applications involving the transfer of County students to the City schools and County students to other County schools may be made.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 83-1957, 83-2118 & 83-2140

Craton Liddell, et al,
Appellees,

v.

State of Missouri, et al
Appellants.

On Motion to Modify Order of
September 13.

Filed: September 30, 1983

Before LAY, Chief Judge, and HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG and BOWMAN, Circuit Judges, En Banc.

ORDER

The motion of the Honorable Paul M. Berra, Comptroller of the City of St. Louis, and the Honorable Ronald A. Leggett, Collector of Revenue of the City of St. Louis, to modify this Court's order of September 13, 1983, to expressly authorize the petitioners to place funds collected by reason of paragraph 6(3) of the district court's order of July 5, 1983, in a separate escrow account pending disposition of a petition for writ of prohibition, No. 83-2140, is denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

ORDER

(Filed Jan. 10, 1984)

A memorandum dated this day is hereby incorporated into and made a part of this order.

IT IS HEREBY ORDERED that City Board's motion, H(2821)83, dated December 15, 1983, be and the same is granted to the extent it seeks to add the Collector of Revenue of the City of St. Louis as a party to this proceeding. In all other respects, City Board's motion, H(2821)83, remains under consideration. Accordingly,

IT IS HEREBY FURTHER ORDERED that the Honorable Ronald A. Leggett, Collector of Revenue of the City of St. Louis, be and he is added as a party to these proccedings.

Dated this 10th day of January, 1984.

William W. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

MEMORANDUM

(Filed Jan. 10, 1984)

This matter is before the Court on City Board's motion to join party and for order to enforce and protect prior orders, H(2821)83, dated December 15, 1983. Only the City of St. Louis and Collector of Revenue responded to this motion, H(2835)83, dated December 27, 1983.

By its motion, City Board asks the Court specifically (a) to add the City of St. Louis Collector of Revenue (Collector), Honorable Ronald A. Leggett, as a party[1] to these proceedings; and (b) to order the City of St. Louis (City) and Collector to pay

---

[1] While the motion does not state explicitly whether City Board seeks to add the Collector as a defendant or as a plaintiff, City Board's supporting memorandum notes "[t]his Court . . . has the inherent authority under Rules 19(a) and 21, Fed. R. Civ. Proc. to add Leggett as a party defendant." Memorandum at 5-6, H(2821)83, dated December 15, 1983 (footnote omitted). Furthermore, the City's and Collector's joint response in opposition to the motion begins by stating "City Board has moved, H(2821)83, to join the Collector of Revenue of the City of St. Louis, Hon. Ronald A. Leggett, as a party defendant[.]" H(2825)83 at 1, dated December 27, 1983.

to City Board certain school tax receipts, as well as interest and penalty. City Board argues that, pursuant to statutory and city charter provisions governing the duties of the Collector, the Collector has no discretion regarding payment of school tax monies collected by him and must pay such revenues to City Board in a timely fashion. Here, however, City Board contends the Collector has not paid an amount of revenues approximately equal to the total amount collected pursuant to paragraph 6(d) of this Court's order of July 5, 1983. The revenues City Board alleges are unlawfully withheld by the Collector are "necessary to implement the orders of this Court." Finally, City Board alleges that the "action by the City of St. Louis and Leggett wrongfully interferes with and prevents City Board from funding its obligations pursuant to this Court's directives and the law of the case."

In opposition to this motion, the City and Collector assert that, despite disagreement with the Court's orders, city officials have certified the tax rate and prepared tax bills, and the Collector has distributed and received payments on those tax bills. Arguing that the Collector is "not under the City's control," they note that he established an escrow account for the disputed revenues in consideration of city taxpayers who might otherwise protest the entire amount of taxes paid, and that the escrow is a "reasonable response" to the situation. Finally, in light of their position that no obstruction of Court orders has occurred, the City and Collector argue that action by this Court would be "superfluous."

Background

On July 5, 1983, this Court entered an order which stated, *inter alia:*

> For the payment of City Board's share of the costs [of implementation of the approved Settlement Plan] . . .

> (d) the City Board is hereby authorized and directed not to reduce its operating levy in the City of St. Louis as of July 1, 1983, as otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C). The State shall not withhold from the City Board funds that the State would otherwise withhold pursuant to Proposition C. The amount of revenue retained by the City Board by reason of not reducing its operating levy shall be utilized to fund the implementation of programs needed to meet City Board's constitutional obligation to desegregate the City's public schools pursuant to the Settlement Plan, as approved. Any revenue retained but not necessary to fund City Board's constitutional obligation shall be applied to reduce its operating levy on July 1, 1984.

Order at 4-5, H(2503)83, dated July 5, 1983.

On August 15, 1983, in addition to filing a notice of appeal, the City of St. Louis applied for a stay of the July 5, 1983, order insofar as

> it enjoins any reduction in City Board's tax rate and assumes continuing jurisdiction over City Board's tax rate, pending apeal or other application for relief before the United States Court of Appeals for the Eighth Circuit. In the alternative, the City respectfully seeks clarification of its responsibilities to collect taxes pursuant to H(2503)83, including direction concerning what rate to collect.

H(2591)83, dated August 15, 1983. In denying the City's request for a stay, this Court stated: "[a]s to the City's alternative request, it is not this Court's practice to render advisory opinions." Order H(2609)83 at 2, dated August 18, 1983.

On or about August 22, 1983, the City, the Collector, and the Comptroller of the City of St. Louis (Comptroller), Honorable Paul Berra, filed a petition for writ of prohibition asking the Eighth Circuit Court of Appeals "to prohibit [the district court]

from enforcing or taking further action with regard to [the] order enjoining the property tax rollback required by Mo. Rev. Stat. § 164.013 (Proposition C)[.]" The appellate court received responses and heard argument on the writ petition and two other requests for stays of the July 5, 1983, order. On September 13, 1983, the court of appeals explicitly held: "[t]he provisions of paragraph 6(d) may be implemented as ordered." *Liddell v. State of Missouri,* Nos. 83-1957, 83-2118, 83-2140, order at 7 (8th Cir. Sept. 13, 1983)(en banc). The court of appeals also deferred action on the petition for writ of prohibition "until such time as we consider the appeals that have been filed on the merits." *Id.*

On September 21, 1983, the Collector and the Comptroller, and not the City, asked the Eighth Circuit to modify its September 13, 1983, order so as "to expressly authorize petitioners to place funds collected by reason of paragraph 6(d) of the district court's order of July 5, 1983, in a separate escrow account pending disposition of a petition for writ of prohibition, No. 83-2140." The Eighth Circuit subsequently denied this motion. *Liddell v. State of Missouri,* Nos. 83-1957, 83-2118, 83-2140, order (8th Cir. Sept. 30, 1983)(en banc).

Discussion

Rule 19(a)(1) of the Federal Rules of Civil Procedure requires joinder of a person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction, if "in [the person's] absence complete relief cannot be accorded among those already parties[.]"

The advisory committee notes to Rule 19(a) specifically state that persons should be joined if, in their absence, "the court would be obliged to grant partial or 'hollow' rather than complete relief to the parties before the Court." 1966 Advisory Committee Note to Rule 19, 39 F.R.D. 89, 90 (1966). *Accord* 7 Wright, Miller & Kane, Federal Practice & Procedure: Civil §1604 at 4 (Supp. 1982).

Under the present circumstances of this case, as more fully described above, and assuming, *arguendo,* for the purposes of this motion, that City Board's allegations are true, the relief ordered by this Court and affirmed by the Eighth Circuit will not be fully effectuated unless the Collector is joined as a party to this action. The Collector, moreover, has invited himself into these proceedings to the extent he seeks extraordinary relief from the Eighth Circuit.

While there is authority for the imposition of remedies on those who are nonparties and who have actual notice of the court's orders, *see Harvest v. Board of Public Instruction,* 312 F.Supp. 269, 276-82 (M.D. Fla. 1970)(ordered relief imposed against nonparty state officials for noncompliance with remedial order in school desegregation case); *United States v. Hall,* 472 F.2d 261 (5th Cir. 1972)(federal court had power to impose sanctions on nonparty for willful violation of order in school desegregation case), this Court determines it more reasonable and equitable to join the Collector to insure all interested parties complete relief throughout these proceedings.

The Court will grant City Board's motion to the extent City Board seeks to add the Collector as a party to these proceedings, but will retain under consideration the other requests of the motion.

Dated this 10th day of January, 1984.

William W. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
of the City of St. Louis,
State of Missouri, et al.,
Defendants.

SHOW CAUSE ORDER

(Filed Jan. 10, 1984)

This matter is before the Court on City Board's motion to join party and for order to enforce and protect prior orders, H(2821)83, dated December 15, 1983. Only the City of St. Louis and its Collector of Revenue responded to this motion, H(2835)83, dated December 27, 1983.

In particular, City Board asks this Court to order the City of St. Louis (City) and its Collector of Revenue (Collector) to pay to City Board certain school tax receipts, as well as interest and penalty thereon.

Having added the Collector of Revenue as a party to these proceedings, and having carefully considered this matter,

IT IS HEREBY ORDERED that on or before February 2, 1984, the Collector and the City shall each show cause why they should not be ordered immediately to pay over to City Board the amounts in dispute, together with interest and penalty thereon.

IT IS HEREBY FURTHER ORDERED that, on or before February 2, 1984, the Collector shall show cause (a) why he should not be held in contempt for failure to follow orders of this Court, specifically H(2503)83 at 5-6, paragraph 6(d), dated July 5, 1983, as affirmed by the United States Court of Appeals for the Eighth Circuit, *Liddell v. State of Missouri,* Nos. 83-1957, 83-2118, 83-2140, order at 7 (8th Cir. Sept. 13, 1983)(en banc); *see also Liddell v. State of Missouri,* Nos. 83-1957, 83-2118, 83-2140 order (8th Cir. Sept. 30, 1983)(en banc); and (b) why he should not be held personally liable for any interest or other penalty or costs incurred by the City on account of his activities relating to the disputed funds.

To comply with this show cause order, the City and its Collector may file their affidavits, briefs, and other documentation supporting their own positions.

IT IS HEREBY FURTHER ORDERED that the United States Marshal be and he is directed to serve personally the Honorable Ronald A. Leggett, Collector of Revenue of the City of St. Louis, with a copy of this show cause order.

Dated this 10th day of January, 1984.

William W. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education of the
City of St. Louis, State of Missouri, et al.,
Defendants.

(Filed September 22, 1983)

ORDER

This matter is before the Court on the Report and Recommendation of United States Magistrate, H(2608)83, dated August 18, 1983, and parties' objections thereto, H(2629)83 (Hazelwood School District), and H(2634)83 (State defendants), dated August 29, 1983.

This funding and budget order is issued in accordance with the mandate of the United States Court of Appeals for the Eighth Circuit, dated September 13, 1983. Thus, by this order, the Court does not intend to approve or require the participating districts' further recruitment or acceptance of interdistrict transfer pupils other than those who have indicated an intention to transfer prior to September 13, 1983. *Liddell v. State of Missouri,* Nos. 83-1957, 83-2118, 83-2140, slip op. at 5 (8th Cir. Sept. 13, 1983)(order). Nor does this Court express or intimate any opinion on the possibility or merits of any "alternative measures to meet the needs of the City Board with respect to desegregation" or of any "order increasing City Board's tax rate." *Id.,* slip op. at 6, 7.

The Court recognizes this Settlement Plan is a new and innovative program. It is difficult to know with precision what the actual costs will be or what economies can be accomplished consonant with the objectives of the settlement. Therefore, the Court reserves the right to review and revise future budget items after there is actual experience upon which to base these financial decisions. The Court acknowledges that certain budgetary decisions must be made now or the Plan may founder before it has fairly begun.

Noting that a page of experience is worth a volume of logic, the Court will direct the financial adviser to review, analyze, and report on the budgeting, funding, and financing of the Plan's implementation. These reports will provide recommendations, if any, for alterations in the funding, financing, and payment provisions of the approved Plan. The first report should be filed on or before December 31, 1983, and quarterly thereafter until further order of Court.

State defendants object to the Magistrate's recommendation that the State separately pay costs incurred by Hazelwood in transporting students seeking to transfer to another school within the district. Hazelwood would not have provided the intradistrict transfer option and would not have incurred any such transportation costs if it had not participated in this approved Plan. Therefore, the Court is not persuaded by the State's contention that there is no "program" for which the State must pay. Even the language of the Plan and the Order approving it allows allocation to the State of these costs. Although Section VIII of the approved Plan limits the State's responsibility for providing transportation to interdistrict transfers, the Plan's language requiring the City Board and State to share the costs of transporting transferring students, and the Order's language at ¶¶ 5(c) and 5(e), which allocate to the State costs of incidental programs and of programs outside the boundaries of the City of St. Louis, permit such an allocation. Thus, the Magistrate's recommendation will be followed. To the extent possible, state

transportation aid shall be applied to defray these transportation costs. Furthermore, the Court encourages the parties' efforts to reduce the costs of transportation where such reductions do not compromise the safety and quality of that transportation.

Hazelwood objects to the Magistrate's failure to recommend the approval of the district's request for the State's separate payment of $60,000 in estimated legal fees and of $15,539 in administrative costs. With regard to the legal fees, Hazelwood asserts these "expenses would not be required except to aid implementation of the Plan." H(2629)83 at 2. Hazelwood later states that the "fees will increase in direct proportion to the careful oversight and vigorous defense produced by the State in challenging the Plan," which implies the fees expended will depend on subsequent litigation of the Plan rather than solely on implementation of the Plan. *Id.* Hazelwood has not established support for its contention that, even in the absence of contractual or statutory provisions, shifting of the payment of one litigant's legal fees to another litigant is required or authorized by the terms of the Plan. Without more, the district court will not overturn the Magistrate's recommendation that this request for legal fees not be approved.

Hazelwood also objected to the Magistrate's failure to approve $15,539 in administrative costs. Hazelwood acknowledges that its participation in the Plan will not require the hiring of additional personnel but asserts that Plan participation will increase the responsibility of the "district's reduced work force." Hazelwood has not established that such added responsibility, if any, may not be compensated from the home or host district incentive payments. Thus, the Magistrate's recommendation will be sustained.

The State disputes the Magistrate's recommendation that the magnet review committee need not approve magnets listed for expansion or creation in 1983-1984. Although this Court's order

does not explicitly require such approval, it does direct Plan participants "to analyze and review the need" of each such magnet. Without reducing the importance of that review, this Court ascertains that there is no present mandate that the listed magnets for 1983-1984 and 1984-1985 be approved by a magnet review committee.

This Court finds that a relatively small county student population in a magnet school does not justify a prohibition against expansion of that school. Thus, the Court will follow the Magistrate's recommendation approving costs of the foreign language secondary program at Roosevelt, as well as other magnets.

The State argues that it should not have to pay administrative costs in addition to student transfer incentive payments, in the absence of a school district's showing that those costs cannot be defrayed by the amount received in incentive payments. The Court will approve the State's separate payment of certain administrative costs incurred by participating districts, in accordance with the Magistrate's report and recommendation. Although the Court does intend that St. Louis County school districts be compensated for expenses, in accordance with the terms of the approved Plan, the Court does not intend to provide a financial windfall to districts participating in the Plan. The amount, need for, and use of the transfer payments will be more easily ascertained after implementation of the Plan.

After review of any recommendations reported by the financial adviser, the Court may determine that, absent a school district's showing to the contrary, all administrative costs should be defrayed by the incentive payments. At this point, the Court will adopt the Magistrate's recommendation for approval of the State's separate payment of certain nonmagnet costs of Affton, Hancock Place, Hazelwood, and Mehlville school districts.

In addition to prior arguments against approval of magnet costs, the State asserts that it should not pay any costs for magnet schools within the City beyond their start-up costs, except in accordance with the terms of an agreement entered into between the State and Webster Groves. As to capital costs, the State asserts it should not have to pay these where no sites have been chosen and where costs go beyond building modification costs. The Court is not bound by any agreement between other parties and does not find the Magistrate's recommendation unreasonable. Thus, the City Board's request for $5,308,043.40 for magnets will be approved in accordance with the Magistrate's recommendation.

The State objects to City Board's request that the State pay the costs of transporting City students to City magnet schools. The Court finds reasonable the Magistrate's determination that these are part of the costs of implementing magnets which are to be paid in full by the State pursuant to ¶ 5(a) of the July 5, 1983, order. To the extent possible, state transportation aid shall be applied to defray these transportation costs.

The State contends the Magistrate erred in determining that the list of programs on pages 26 and 27 of the Memorandum dated July 5, 1983, was illustrative rather than exhaustive. As the Magistrate found, the Court suggested priorities in that program listing. After suggesting priorities, the Memorandum acknowledges that "the Court is not expressing either endorsement or disapproval of all the programs mentioned in the Appendix or Exhibit 2, nor is the Court intending to limit or preclude consideration of additional quality education programs." Memorandum, H(2503)83 at 28. Thus, while not endorsing implementation efforts that "may topple the program" through "overload and waste," the Court will follow the Magistrate's recommendations regarding programs not explicitly listed on pages 26 and 27 of the Memorandum.

State defendants object to the Magistrate's recommendation that certain costs requested by City Board for the controller's and the treasurer's offices be approved for separate payment by the State. The State argues these are part of City Board's "everyday operating costs" which should not be transferred to the Settlement Plan for funding. The Magistrate reasonably found that "[a] program's prior existence or funding status should not determine whether or not a presently requested amount should be approved if the present request is not duplicative, is related to the presently approved program, and is for a reasonable amount." Without more than the State's broad assertion against these costs, the Court will approve the amounts as recommended by the Magistrate.

The Court is also not persuaded by the State's objections to the Magistrate's recommendations that the Court approve the requests regarding the alternative high school, the upgrading of services to handicapped students, the curriculum supervision program, the library resource center personnel, and the nursing staff.

At page 16 of his Report and Recommendation, the Magistrate states: "[t]o the extent these are costs incurred in implementing part-time programs in the non-integrated schools and only to that extent, the undersigned finds they should be paid in full by the State pursuant to paragraph 5(b) of the Court's July 5, 1983, order." If there is an understanding that this Court intended the State to pay one hundred percent of the costs of the proposed part-time non-integrative program, the Court takes this opportunity to clarify that misunderstanding.

In 1980, the United States Court of Appeals for the Eighth Circuit stated that, in a public school system "deliberately constructed and maintained to enforce racial segregation," the board of education's establishment of a neighborhood attendance policy did not fulfill its affirmative duty to take steps necessary to attain a unitary system. *Adams v. United States,*

620 F.2d 1277, 1285-86 (8th Cir.)(en banc)(quoting *Swann v. Charlotte-Mecklenberg Bd. of Ed.*, 402 U.S. 1, 28 (1971)), *cert. denied,* 449 U.S. 826 (1980). Thus, City Board's 1954-1956 neighborhood attendance policy and "continuation transfer" policy perpetuated and failed to eliminate the segregated City school system. *Adams, supra,* 620 F.2d at 1286-87, 1288. The Eighth Circuit further found that, after 1956, "[City] Board's steadfast adherence to a student assignment policy which did not desegregate the schools and its use of intact busing, school site selection, block busing, permissive transfers, and faculty assignments have preserved segregation in the school system." *Adams, supra,* 620 F.2d at 1288. In an effort to remedy segregated conditions, City Board proposed the association of racially isolated schools for special projects and activities to "provide opportunity [sic] for significant interracial contacts and experiences...[and] some racial mixing for the remaining all-black and all-white schools." *Id.* at 1292. Although that City Board plan was not adopted, the Eighth Circuit recognized the continued existence of one-race schools and the need to develop and implement "less than full-time integrated learning experiences." *Id.* at 1296; *see also Liddell v. Board of Education,* 667 F.2d 643, 648 (8th Cir.), *cert. denied,* 454 U.S. 1081, 1091 (1981) ("Although the plan reflects the fact that it is not possible to fully integrate every school in the St. Louis system, the district court faithfully followed the directions of this Court by providing a variety of integrative experiences and enhanced educational opportunities for students remaining in the predominantly black schools.") Subsequently, the Eighth Circuit reiterated that the district court could "require that additional part-time programs be established at state expense to provide for more *integrative experiences* for students in all-black city schools, including programs which would involve voluntary participation by suburban schools." *Liddell v. Board of Education,* 677 F.2d 626, 642 (8th Cir.), *cert. denied,* 102 S.Ct. 172 (1982)(emphasis added). For improving the quality of education in the remaining all-black schools in the City of St. Louis as part

of desegregation efforts, the Eighth Circuit has stated that the district court could require the State *and* City Board, as defendants, to take "additional steps" to make such improvements. *Id.* at 641-42.

Based on the record and the circumstances of this case, it is both unfair and unreasonable to require the State to pay one hundred percent of the costs of part-time programs that do not provide more integrative experiences for students in all-black City schools. Part-time programs that are not desegregative in nature are not the main thrust of this case. *See, e.g., Liddell v. Caldwell,* 546 F.2d 768, 773 n.10 (8th Cir. 1976), *cert. denied,* 433 U.S. 914 (1977). Where a part-time program is provided in a one-race school with students of the same race only participating in the program, then the State should not be required to pay more than one-half the cost of such a program. *Cf. Liddell, supra,* 677 F.2d at 641-42. To the extent that a part-time program within a one-race school does not actually enhance desegregation, then both the State and City Board shall pay equal shares of the actual reasonable costs incurred in implementing such programs as part of remedial desegregation efforts. This Court will approve the amounts requested for such programs but will not approve the State's full funding of those programs unless they are actually desegregative in nature.

Having carefully reviewed the Magistrate's Report and Recommendation, the State's and Hazelwood's objections thereto, as well as the pertinent record, and subject to the provisions of the September 13, 1983, order of the United States Court of Appeals for the Eighth Circuit,

IT IS HEREBY ORDERED that, to the extent the Report and Recommendation approved the State's full payment of the costs of nondesegregative part-time programs at the non-integrated schools, the Report and Recommendation is not approved or sustained. Accordingly,

IT IS HEREBY FURTHER ORDERED that the State and City Board shall each pay one-half of the costs of any non-desegregative part-time programs provided only to students of one-race schools within the City of St. Louis.

IT IS HEREBY FURTHER ORDERED that in all other respects, the Report and Recommendation of the United States Magistrate, H(2608)83, be and the same is sustained, adopted, and approved. Accordingly,

IT IS HEREBY FURTHER ORDERED that the State shall make separate payments for Kirkwood's magnet school, Clayton's magnet school, University City's magnet schools, Normandy's magnet schools, and the City Board's Foreign Language Secondary magnet school [City Board Ex. 5 at 56].

IT IS HEREBY FURTHER ORDERED that the State shall make separate payment to the Hancock Place School District for a total of $29,220.00, as requested.

IT IS HEREBY FURTHER ORDERED that the State shall make separate payment to Affton School District for a total of $35,441.09, as requested.

IT IS HEREBY FURTHER ORDERED that the State shall make separate payment to Mehlville School District for a total amount of $47,122.00 for a desegregation coordinator and for workshop expenses, and shall not make a separate payment for the other costs Mehlville sought.

IT IS HEREBY FURTHER ORDERED that the State shall make separate payments to Hazelwood School District in the amount of $103,771.00, as listed in page 12 of the Magistrate's report, and shall not make separate payments for the other costs Hazelwood sought. The State's obligation to pay shall be reduced to the extent Hazelwood either does not incur the expenses for transportation or receives other reimbursement for transportation expenses.

IT IS HEREBY FURTHER ORDERED that the amount remaining in dispute in the line item "inflation contingency" throughout the City Board's budget be and the same is not approved.

IT IS HEREBY FURTHER ORDERED that the State shall separately pay its share of functions 6903 and 1907 of component A902 under ¶ 5(c) of the July 5, 1983, order, and shall not separately pay any amounts in the remaining functions of component A905 except to the extent those amounts may be paid by the State pursuant to the terms of ¶ 5(d) of the July 5, 1983, order.

IT IS HEREBY FURTHER ORDERED that City Board shall amend its request for approval of costs to "restore and increase librarians" [City Board Ex. 6 at 4-5] so as to seek funding for one full-time librarian for every three elementary schools, and aides supplying the remaining staffing needs in these schools, and as amended the request be and the same is approved. Furthermore, City Board's request for funding for one media specialist for each secondary school and for .5 librarian be and the same is approved. The State shall separately pay its share of these costs.

IT IS HEREBY FURTHER ORDERED that the City Board's request for postage for the public affairs program be and the same is approved in the amount of $16,000.00 only, and the State shall separately pay its share of this approved amount.

IT IS HEREBY FURTHER ORDERED that, on or before October 3, 1983, the State and the City Board shall submit a joint written report reflecting all areas of agreement and areas of disagreement, including the reasons therefor, for each amount noted in the City Board's exhibits 2 and 9, regarding the object code "not otherwise classified;" and any amounts remaining in dispute for this object code be and the same are not approved for this year.

IT IS HEREBY FURTHER ORDERED that, with the deletion of the amounts required by the above paragraphs, and except for nondesegregative part-time programs at non-integrated schools, all amounts requested by the City Board for full payment by the State be and the same are approved.

IT IS HEREBY FURTHER ORDERED that the amounts sought for nondesegregative part-time programs at non-integrated schools be and the same are approved with funding shared equally by City Board and State.

IT IS HEREBY FURTHER ORDERED that the City Board's remaining requests for programs to be funded by the City Board and the State equally be and the same are approved upon deletion of the amounts remaining in dispute; and the State shall separately pay its share of these costs.

IT IS HEREBY FURTHER ORDERED that, on or before October 3, 1983, each participating district that submitted a budget to which the State defendants originally objected shall file another 1983-1984 budget reflecting the amounts approved through court order or through agreement with the State.

IT IS HEREBY FURTHER ORDERED that all budget requests to which the relevant parties have agreed be and the same are approved, and that the State shall pay its share of these approved budgets. All Plan participants having budgets to which State defendants agreed shall file a copy of the 1983-1984 budget with the Court on or before October 3, 1983.

IT IS HEREBY FURTHER ORDERED that the State shall make its payments to the relevant Plan participants and the City Board shall make its payments in installments according to the provisions of Order H(1810)82, dated December 17, 1982. Since the date of the first installment payment, September 20, has passed, the State and City Board shall make their first installment payment on or before October 3, 1983.

IT IS HEREBY FURTHER ORDERED that the objections of the Liddell plaintiffs be and the same are overruled.

IT IS HEREBY FURTHER ORDERED that, on a quarterly basis, the Court-appointed financial adviser shall review, analyze, and report on the budgeting, funding, and financing of the Plan's implementation. Each report shall provide recommendations, if any, for alterations in the funding, financing, and payment provisions of the approved Plan. Plan participants shall provide access to the information needed by the expert to comply with this Order. Parties may file responses, if any, to each report within ten days after the report is filed. The first report shall be filed on or before December 31, 1983.

Dated this 22nd day of September, 1983.

William L. Hungate
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100-C(3)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education
Of The City Of St. Louis,
State Of Missouri, et al.,
Defendants.

(Filed Aug. 18, 1983)

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

This matter is before the undersigned United States Magistrate upon the budget disagreements among the Liddell plaintiffs, the State defendants, and various St. Louis area school districts participating in the approved Settlement Plan, for the 1983-1984 school year. 28 U.S.C. §636(b)(1)(B). A hearing was held on August 5, 1983.

1. Liddell Objections.

The Liddell plaintiffs object to the failure of the City Board to implement for 1983-1984 Program Component B101, "Lower Pupil-Teacher Ratios in Non-Integrated Schools." They argue that the Court should reject the City Board's suggestion that for 1983-1984 classroom space limitations do not permit the reduction of pupil-teacher ratios in non-integrated schools below the reduction proposed for district-wide implementation. At the hearing Dr. Jerome Jones, Superinten-

dent of the St. Louis schools, testified that 1983-1984 has been intended as the period of planning for reducing the ratio in 1984-1985 and that some provisions of the voluntary plan will improve the non-integrated schools in 1983-1984. This position is reasonable for 1983-1984 and the undersigned will recommend that the objections of the Liddell plaintiffs be overruled.

2. State Objections.

In accordance with the budgeting procedure contained in the Court's order approving the Settlement Plan, representatives of the participating school districts and of the State met to discuss the proposed budgets, and submitted statements regarding any outstanding objections. At the hearing, several of the parties informed the Court that some of the disagreements were then or would soon be settled. *See also* Report of State defendants, H(2573)83, dated August 10, 1983. In addition to outstanding budget disagreements between the City Board and the State, the State has objections to budget requests for magnet proposals in four St. Louis County school districts and to the amounts requested in budgets submitted by four other St. Louis County school districts. Furthermore, an agreement between the State and the Webster Groves school district regarding its proposed budget was submitted to the Court on August 16, 1983.

a. Magnet Schools.

The State objects to various expenditures for magnet schools because these schools have not yet received the approval of the Voluntary Interdistrict Coordinating Council or the magnet review committee. The Court's memorandum directed "plan participants to analyze and review the need of each expanded and new magnet proposed for 1983-1984 and 1984-1985 prior to the program's implementation." Memorandum H(2503)83 at 22. This language does not constitute a requirement that any committee approve the establishment or expansion of each magnet. Thus, the undersigned is not persuaded that the State

defendants' instant argument justifies disapproval of such budgets in their entirety. The following magnet school budgets, to which the State defendants raised only this objection may be approved in accordance with the agreement reached between the interested parties:

Foreign Language Magnet City Board Ex. 5 at 56	$311,035.68
Kirkwood (no other magnet budget presented to the Court)	3,715.00
Clayton (approved by the Court in April, 1983)	29,026.00
Normandy	51,510.65
University City	45,540.00

b. County Non-magnet Programs.

The State defendants object to budgets submitted by four other St. Louis County school districts, because they contain requests for personnel and equipment costs incurred in providing general programs to transfer students. The State defendants assert that no such costs should be approved for payment separate from the student transfer incentive payments received by participating districts. The State reasons that the incentive payments, which are based on each district's per pupil costs, provide "more than enough reimbursement for operational costs, instructional costs and personnel costs for counselors, remiedial teachers or 'coordinators'." H(2532)83 at 4, dated July 25, 1983. Based upon this reasoning, the State defendants object to Hancock Place School District's request for $29,220; Affton School District's request for $35,441.09; and Mehlville School District's request for $112,942.00; and part of Hazelwood School District's request for $247,935.

c. Hancock Place.

Hancock Place seeks approval of a budget totalling $29,220.00 for the costs of salary, benefits and travel for a "Desegregation Coordinator." H(2532)83, attachment for Hancock Place School District budget proposals. The costs of supplies and secretarial help for this newly created staff position would be provided by the district. Roger Brodbeck, Superintendent of Hancock Place, testified that the district had participated in the 12(a) voluntary plan during 1982-1983 and that during that year, the existing administrators shared, with hardship, the duties of the proposed coordinator. Based upon that participation and the more than double the 1982-1983 number of transfer students expected by Hancock Place in 1983-1984, the district perceives a "definite, critical need" for this position. For example, Mr. Brodbeck stated that any transportation problems are an additional strain on the district's administration because the district does not provide transportation to its own resident students. The district's present administrative personnel are comprised of two principals for three elementary schools; a principal and an assistant principal at the high school; and a business manager (assistant superintendent) and a superintendent. Each administrator has one secretary.

Under these circumstances, the undersigned finds that Hancock Place's request for a reasonable amount to cover some of the expenses for a desegregation coordinator, or a total of $29,220, is reasonable and should be approved. After this year, the need and budgets for such an administrator may be reexamined in light of Hancock Place's experience with implementation of the plan.

d. Affton.

Affton seeks approval of a total of $35,441.09 in excess of any transfer incentives paid to the district.[1] This amount includes a full-time coordinator's salary and fringe benefits (27,519.15), a half-time secretary's salary and fringe benefits ($7,384.24), mileage for the coordinator (75.00), printing ($164.00), and equipment ($298.70).

Mr. Anthony Liebig, Director of Business for Affton School District, stated that the coordinator position, which was created solely for desegregation purposes during Affton's participation in the prior 12(a) voluntary plan, is needed because this district, of approximately 2,000 students, expects over twice as many transfer students in 1983-1984 as it had in 1982-1983, and has only two administrators who cannot absorb the added responsiblities.

Under the circumstances, the undersigned finds that this is a reasonable amount for necessary costs incurred solely because of Affton's participation in the approved Settlement Plan. Thus, the undersigned recommends that the Court approve the request in the amount of $35,441.09. Again, after this year, the need and budget for this position may be reexamined in light of Affton's experience in implementing the approved plan.

---

[1] The budget total of $227,986.17 originally proposed by Affton included a total of $188,917.56 for expected transfers. That amount is not being sought for State payment over and above the State's incentive payments, and thus is not before the Court for approval. Of the remaining $39,068.61 in the original budget, Affton agreed that $3,627.52 (for superintendent costs, business manager costs, and office space) could be recovered indirectly through the per pupil costs since the positions and office space already exist within the district. Thus, the total presently in dispute is $35,441.09.

e. Mehlville.

Mehlville School District seeks the Court's approval of a budget totalling $112,942.00, excluding the amount Mehlville will receive in student transfer payments. Of this amount, $39,622 is budgeted for a desegregation coordinator. In support of this request, Dr. Thomas Blades, Superintendent of Mehlville, testified that the district, which did not participate in the prior 12(a) plan, has a present enrollment of approximately 9,400 students and expects to receive up to 300 transfer students in 1983-1984. In Dr. Blades' professional opinion, the full-time desegregation coordinator position, which does not presently exist within the district, is necessary. Existing personnel have already taken on additional responsibilities since the district has recently reduced the number of its regular staff positions.

Mehlville also seeks approval of $7,500.00 for workshops for administrators, board members, and staff members.

This is Mehlville's first year of participation in the voluntary interdistrict transfer plan, with a relatively large number of incoming students expected. To assist the district's staff and the community in dealing with this participation, the Court should approve these two requests.

Mehlville's remaining requests consist of a secretary ($12,338), guidance counselor ($35,077), subclerical position ($1,070), various ancillary costs ($6,880), capital expenses ($7,293), and an "indirect cost rate" ($3,162). The undersigned believes that the district may obtain reimbursement for some, if not all, of these expenses through the still unbudgeted incentive payments. Thus, the Court should not approve these costs for separate payment by the State at this time.

f. Hazelwood.

Hazelwood proposes a 1983-1984 budget totalling $247,935 in expenditures and $257,945 in receipts.[2] Hazelwood's Ex. 1, Attachment 3 at 1 and 2. The sum of $68,125 for interdistrict transfer students should be compensated by the interdistrict student transfer payments that are separately made by the State according to a formula that is based upon the host district's per pupil costs. *Compare* Hazelwood's Ex. 1, Attachment 3 at 2, "(1) Proposed expenditures for 25 interdistrict transfers at $2,725 ea. (Est. Per Pupil Cost)" *with id.* at 1 and 3, §1, regarding allocation per pupil. Thus, the undersigned recommends that this sum not be paid by the State other than as the interdistrict student transfer incentive payments Hazelwood will otherwise receive according to the terms of the plan. As a result of this exclusion, the budget requests are reduced to $179,810 for payment of intradistrict student transfer transportation costs (total: $47,115); student activity transportation costs (total: $33,482); other costs (total: $39,213); and legal fees ($60,000).

Despite State's objection that such costs might be reimbursed through the transfer payments, the undersigned recommends the approval of the requested $21,288 for consultants' services and other expenses incurred in conducting the proposed inservice workshops. *See* Hazelwood's Ex. 1, Attachment 3 at 4, ¶5(a) - (c) and (f). This is Hazelwood's first year of participation in any voluntary transfer program and the requested costs are reasonable.

---

[2] The budget originally proposed by Hazelwood totalled $280,922 in expenditures, and $290,232 in receipts. Hazelwood's Ex. 1, Attachment 3 at 1 and 2. Dr. Thomas J. Lawson, Superintendent of Hazelwood School District, testified that, upon review of the budget, an error of duplication was discovered in the request regarding "part-time education programs." To correct the error, the proposed budget was reduced by $32,987, the amount of the duplication.

The undersigned is not persuaded, however, that the requested total of $15,539 in administrative costs should be paid by the State. First, Hazelwood has not shown, as did Affton and Hancock Place, that its present administrative, personnel, or economic circumstances require any additional positions or administrative expenses in the district's regular programs. Second, Hazelwood has not budgeted as an expenditure the estimated amount it will receive in home district incentive payments, or a possible total of $10,010. Hazelwood's Ex. 1, Attachment 3 at 3, ¶2. Hazelwood might use such payments to offset any such expenses. Thus, the undersigned does not recommend approval of this requested amount.

In addition, the State defendants object to Hazelwood's request for a total of $47,115 for costs incurred if forty-four eligible students seek intradistrict transfer to another school within Hazelwood. Hazelwood has one school falling within the intradistrict transfer terms of the agreement.

The Court's language does not prohibit the State's payment of Hazelwood's intradistrict transportation costs. The settlement agreement provided that the City Board and the State would share certain costs of implementing the approved plan. Section 10 at X-2. By the agreement's explicit terms, these shared costs include "transportation of transferring pupils," without limitation as to whether or not those transportation costs were incurred for *inter*district or *intra*district transfer students.

In approving the Settlement Plan, the Court explicitly allocated several, but not all, costs incurred in the implementation of the Plan. Order H(2503)83 at 2-4. Paragraph 5(c) specifically ordered the State to pay "one hundred percent of the reasonable actual costs of programs implemented outside the geographic boundaries of the City of St. Louis." *Id.* The State was also ordered to "pay in full . . . the reasonable, actual costs to implement incidental programs." *Id.* at ¶5(e). Clearly,

Hazelwood's intradistrict program is outside the geographic boundaries of the City of St. Louis. Thus, the question arises whether such intradistrict transportation costs are either costs of implemented programs or "costs to implement incidental programs." The undersigned finds that, because Hazelwood would not have incurred these expenses but for its participation in the approved Settlement Plan, these expenses should be paid by the State as costs of implementation of Settlement Plan programs.

For the same reasons, Hazelwood's requests for a total of $33,482 to cover the costs of "student activity transportation costs" and for a total of $1,886 to transpor. Hazelwood students participating in part-time educational programs, should be allowed. The State should not make any duplicate payments for the transportation of interdistrict transfer students to or within Hazelwood. Therefore, the recommended approval of the amount for interdistrict transfer students, or a total of $29,750, which is included in Hazelwood's request for student activity transportation costs, is not intended to authorize such duplication. If Hazelwood does not incur those costs because the State provides such transportation or if the State makes its interdistrict student transfer payments in a manner other than through payments on these approved budgets, then no further payment for those transportation costs is required of the State.

Hazelwood asks for approval of a total of $60,000 for "legal fees." Mr. Gene E. Aker, Assistant Superintendent for Hazelwood School District, testified that, in preparing this request, he estimated the fees at a rate of $80 per hour for fifteen hours each week. In further support of this request, Hazelwood's budget explanation states:

> According to the settlement agreement reasonable legal fees are to be borne by the state as a result of legal services rendered to a district in the implementation and monitoring process.

Hazelwood's Ex. 1, Attachment 3 at 6. Only in extraordinary circumstances will a court, absent an explicit statutory or contractual provision, shift to another litigant the attorney's fees incurred by one litigant. No such extraordinary circumstances have been shown to exist here. State defendants accurately point out that only Caldwell, City Board, and Liddell are specifically entitled to consideration of an attorney's fees award. Plan at XI-1, ¶B; order H(2503)83 at 9, ¶14. This requested amount should not be approved as "other costs incurred" in implementing this Plan.

Therefore, the undersigned recommends that the Court approve a total of $103,771 beyond the amount Hazelwood will receive from the State as student transfer incentive payments, as follows:

$47,115	Intradistrict transfer student transportation
33,482	Student activity transportation costs
1,886	Part-time educational parograms
19,018	For consultant expenses and inservice workshops
2,270	Fringe benefits on inservice salaries

Hazelwood's Ex. 1, Attachment 3 at 2, ¶5(3), (4) (5)(a) - (d), 5(f).

To the extent personnel and administrative costs are approved for separate payment by the State, rather than for reimbursement through the transfer payments, the recipient districts should not include those costs in determining the district's "cost per pupil."

g. City Board.

The City Board has proposed a budget totalling $16,235,461.80 for programs to be funded fully by the State (City Board Ex. 5), and a budget totalling $40,221,931.32 for programs to be funded by the State and City Board equally (City Board Ex. 6). Of the amount requested for full funding by the

State, $10,670,857.12 remains in dispute. Of the amount requested for funding equally shared by the State and City Board, $28,654,953.76 remains in dispute.

In addition to the previously approved costs for the Foreign Language magnet school at Roosevelt High School, City Board seeks the following amounts as "costs of implementing the magnet programs and schools" pursuant to paragraph 5(a) of the Court's order:

Building Preparation (City Board Ex. 5 at 77-83)	$4,100,760.00
Architecture & Engineering	10,943.64
Textbooks at Lyon & Woerner	71,106.12
Maintenance of Grounds, Buildings, and Equipment	309,833.64
Transportation of City residents to City Magnets	815,400.00
	$5,308,043.40

State defendants argue that these costs fall within the terms of ¶5(d) of the Court's order, which provides in part:

> City Board shall retain the obligation and responsibility to fund capital expenditures needed to restore, repair, maintain, or enhance existing facilities as part of City board's desegregation efforts.

Based upon this provision, State defendants contend these costs should remain the obligation of City Board.

These costs, whether or not they are capital expenditures, constitute costs of implementing magnet schools. Paragraph 5(a) of the order of July 5, 1983, specifies without limitation that the State is to pay the full costs of implementing magnets. Paragraph 5(d) is of more general application than ¶5(a) and is subject to the provisions of ¶5(a). Based upon this interpretation, the undersigned recommends that these costs be approved for payment by the State.

There are two general types of part-time programs within th Settlement Plan: (1) programs to which all signatories agree an which are contained in Section V of the Settlement Plan; and (2 programs to which all signatories have not specifically agree and which are directed to improving the quality of education i the nonintegrated schools in North St. Louis, *see* Section B o the Plan Appendix.

The type (1) classification includes the "Honors Music" pro gram, for which the City Board requested a total of $629,783.6 (City Board Ex. 5 at 2-10), and the "City/County Caree Education" program, for which City Board requested a total o $203,560.56. The State objects to both of these request because they are not listed at pages 26-27 of the Court' memorandum approving the plan, and because no committe has yet indicated approval of the programs. Neither of thes arguments is apposite. The list on pages 26-27 specifies pro grams on which the parties are to focus attention. The list doe not limit the programs that may be implemented but suggest priorities if plan participants are unable to implement all recom mended programs. Furthermore, the District Court's directiv to participants to review and analyze programs pertained ex clusively to magnet schools proposed for establishment or ex pansion in 1983-1984 or 1984-1985. Neither of these program is a magnet program; thus, the Court's directive is inapplicabl as a bar to their implementation.

With regard to the second category of part-time programs the State defendants object to the City Board's requests for (a the L.I.F.T. program, totalling $221,159.16 (City Board Ex. 5 at 20); and (b) Schools of Emphasis Program, totallin $297,466.56 (City Board Ex. 5 at 22). State defendants conten these costs should not be approved because these programs ar not listed on pages 26-27 of the Court's memorandum. Again the undersigned finds that the District Court's listing is not ex haustive or exclusive, and will recommend approval of the re quested costs.

City Board also asks for approval of the State's payment of costs incurred in coordinating the part-time programs in the non-integrated schools, for a total of $3,043,745.64 (City Board Ex. 5 at 15-17). State defendants argue they should not have to fully fund these costs, and that the costs should be shared equally by City Board, since "it is a general program for the entire school system." To the extent these are costs incurred in implementing part-time programs in the non-integrated schools and only to that extent, the undersigned finds they should be paid in full by the State pursuant to paragraph 5(b) of the Court's July 5, 1983, order. Thus, based upon the City Board's explanation of this request (City Board Ex. 1 at 6), the undersigned recommends approval of these expenses.

Again, the State defendants object to certain costs because the programs are not listed on pages 26-27 of the District Court's July 25, 1983, memorandum. These objections are directed to the City Board's budget requests for: Curriculum Development [City Board Ex. 6 at 1]; Middle School Math and Science Teachers [City Board Ex. 6 at 25]; Upgrade Quality of Services for Handicapped Students [City Board Ex. 6 at 26-27]; Alternative High School [City Board Ex. 6 at 31]; Tri-A Outreach Program for Dropouts and Expelled Students [City Board Ex. 6 at 32]; Middle School Science Enrichment [City Board Ex. 6 at 36]; Security Guard Service [City Board Ex. 6 at 39-40]; Controller's Office, Accounting and Auditing Services [City Board Ex. 6 at 43]; Insurance Administration [City Board Ex. 6 at 44]; Purchasing, et al. [City Board Ex. 6 at 45-49]; Planning Office [City Board Ex. 6 at 53]; and Personnel . . . for Deferred Maintenance...and Improvements [City Board Ex. 6 at 55-61].

As previously stated, the undersigned interprets the District Court's listing as a directive to focus attention on certain programs, and not as an exhaustive or limiting list of the only programs approved for implementation this year. Thus, the undersigned recommends the approval of costs for those programs to which the failure of a specific listing is the only objection: Cur-

riculum Development; Middle School Math and Science Teachers; Tri-A Outreach Program for Dropouts and Expelled Students; Middle School Science Enrichment; Security Guard Service; Purchasing, et al.; and Planning Office.

The State defendants also object to the requests for costs of the controller's office, accounting and auditing services; the treasurer's office, insurance administration; and the alternative high school, because these items were fully funded by the City Board through the 1981-1982 school year. A program's prior existence or funding status should not determine whether or not a presently requested amount should be approved, if the present request is not duplicative, is related to the presently approved program, and is for a reasonable amount. The undersigned finds that these programs are listed in Fairness Hearing Exhibit 2 (pages 9, 24 and 25). Furthermore, there is no allegation that the requested amounts are unreasonable, duplicative, or are for programs unrelated to this desegregation remedial effort. Since this is the only remaining objection to the first two budget requests, those requests should be approved.

The State defendants further object to the alternative high school budget request, because no site location is identified and because the District Court recently referred to alternative student discipline programs in an order pertaining to the intradistrict plan. First, the "alternative high school" is not listed as one of the "alternative student discipline programs" within the intradistrict desegregation plan or in the Court's recent order. Second, no evidence was presented at the hearing to indicate that the City Board considers it as such a program. In fact, Dr. Jones testified that this particular proposal is for those students who have "learning difficulties" and not for those who are "disciplinary problems." *See also* City Board's Post Hearing Memorandum, H(2587)83 at 13, dated August 12, 1983. The failure to have already chosen a site for this school is not a sufficient justification for disapproving this budget request. After the Fairness Hearing and upon the Court's ap-

proval of the Settlement Plan, the City Board determined that this program could be implemented by second semester of this year. Clearly, further planning, including the determination of the school's location, must occur prior to the program's implementation. The District Court should approve the amount requested for this program.

The State defendants further object to the City Board's request for $8,710,992.72 for "Personnel and Related Operational Resources Including Equipment for Deferred Maintenance and Improvements," [City Board Ex. 6 at 55-61]. The State defendants contend the City Board alone should bear these costs as "capital expenditures necessary to restore, repair, maintain, or enhance existing facilities" within the terms of ¶5(d) of the Court's July 5, 1983, order. The City Board included these as shared costs on the grounds that these are the "operational costs of maintenance" and not capital expenditures covered by the terms of ¶5(d) of the Court's order. The financial adviser reported that all of these components should be capitalized because they "are part of a total program presented in the Settlement Agreement to improve the quality of educational opportunities in St. Louis by rehabilitating and modernizing school buildings." Report on Inflation Contingency and Capital Outlay, H(2574)83 at 11, dated August 10, 1983 [hereinafter financial adviser's report]. The financial adviser defined a capital expenditure as "[a]ny expenditure which increases the value of the school district's property."

The undersigned notes an inadvertant inconsistency in the financial advisor's application of the definition of "capital expenditures" to certain functions of Component A902 in the City Board budget. The advisor at page 11 of his report recommended the capitalization of all of Component A902, while recommending that a function therein not be capitalized in Component C102, *i.e.* function 6903. The undersigned believes that functions 6903 and 1907 of Component A902 are not capital expenditures, because the record indicates they are for

maintaining the status quo of the assets concerned, and are not for increasing the assets' values. Therefore, the District Court should not approve any of the functions of Component A902, except functions 6903 and 1907, thereby approving a total of $304,129.08 for Component A902. This recommendation should not subsequently be construed as recommending the elimination of any subsequent payment obligations of the State pursuant to the terms of paragraph 5(d).

The State defendants object to the City Board's request for funds to upgrade the quality of services to handicapped students. In addition to their argument that this program is not among those listed on pages 26 and 27 of the District Court's July 5, 1983, memorandum, the State defendants contend that these additional costs can be partially reimbursed by State and Federal money for programs for the handicapped, and that the implementation of these programs is required by law and should not be contingent upon the receipt of additional funding. The City Board has demonstrated that these are costs incurred in improving existing services, rather than costs incurred in providing nonexistent services. Thus, this budget request should be approved. By recommending approval of this budget request, the undersigned does not intend to preclude the application of other funds to this program, or to approve duplicated revenues.

The State defendants object that the City Board's request for the "curriculum supervision" program is excessive, unnecessary and "not related to staffing patterns within the county." The State defendants also object to City Board's request to fund a "library resource center" as part of a program to upgrade the library/media service. The State defendants contend the latter request is "in excess of AAA standards." The City Board supports both requests on the basis that they are among those listed on pages 26 and 27 of the District Court's July 5, 1983, memorandum.

The fact that these programs may exceed county standards or state classification standards does not justify barring such pro-

grams as part of a remedial desegregation effort in the city's public school system. These programs are among those specified by the District Court for prompt consideration. By approving these budget requests, the undersigned is in no way intending to approve "excessive" or "unnecessary" expenses, and, as with all expenses, the City Board should make every effort to implement these programs without waste or duplication.

Because the undersigned has recommended the approval of costs for the Library Resource Center and for the alternative high school, the City Board's additional request for costs of the "operational services" for these programs should be approved. The State defendants only object to this particular request for the same reasons asserted against the Library Resource Center and the alternative high school. The State's objections to those programs were recommended to be overruled and do not require further consideration at this point.

The City Board also seeks approval of funds to increase the number of librarians and to provide nurses. The State defendants do not object to the programs but do object to the amount of staff the City Board seeks to hire as part of each program.

Concerning the librarians, the City Board asserts that it presently has no librarian in any elementary school and about one librarian for each secondary school. The City Board seeks approval of a budget that would permit one librarian for every 250 enrolled students. The State defendants propose one librarian for every four elementary schools, with aides to complete staffing needs. The City Board counters the State's suggestion by contending that the use of noncertificated staff, such as aides, to fill the positions of teaching staff, such as librarians, would violate State law and would not provide the needed skills. The undersigned is not persuaded that teaching personnel are needed full time at each library, particularly at the elementary school level. Thus, it is recommended that full-time librarians be hired on the basis of one for every three elementary schools,

with aides hired to satisfy the remaining staffing needs at the libraries throughout the school system. The undersigned recommends approval of the budget request for the secondary schools. The City Board should amend these budget items to reflect this recommendation.

The State defendants object to the number of nurses requested by the City Board, which seeks approval of one full-time nurse for each middle and high school and one full-time nurse for each 500 students enrolled at the elementary school level. The City Board asserts that its request is based upon the "health and welfare of students" attending city schools. The City Board points out that the State Handbook for Classification leaves the actual number of nurses to the discretion of the individual school district, and that the City of St. Louis itself does not provide any health care to the students in the City's public school system. James Bliss, State Director of School Finances, testified that the State would agree to provide twenty nurses for this program. Not convinced that the State's suggestion will satisfy the apparent needs of the city's public school system in its desegregation efforts, the undersigned will recommend the approval of City Board's original request.

State defendants object to two requests on the ground that the programs cannot be fully implemented within the 1983-1984 year, and the budgets should be reduced by one-half the amount requested. These are the budget entries for the staff development unit and a parental involvement program. Both of these programs are among those listed by the District Court for prompt consideration. In light of the City Board's acknowledgment that it may not be able to fully implement all programs and the fact that the budgets reflect estimates of the maximum expenditures for any given program, the undersigned is not persuaded that the State defendants' generalized assertion that these proposals cannot be fully implemented should bar approval of the proposed budgets. Thus, these requests should be approved. If the programs are not implemented, there need be no payment for them.

The State defendants object to a request for $32,000 for postage as part of a program to strengthen the public affairs office. The undersigned agrees with the State defendants that much of the public information to parents may be disseminated through delivery of materials to the students, to the schools' parent groups, and similar organizations. This method would reduce the cost of each mailing by $2,000, as estimated by City Board. City Board Ex. 1, page 67. Therefore, the undersigned will recommend approval of the State's request that this amount be reduced by one-half.

The State defendants object to each line item 99 "Inflation Contingency" throughout the City Board's budget. The State defendants argue that this is not a valid line item because it does not show specifically how the City Board would spend such funds. Dr. Bliss testified that "a budget is a control tool" and this is a "noncontrol item." *See* financial adviser's report at 2; *see also* the City Board's post hearing memorandum, H(2587)83 at 16 ("the approved budget serves as a cap for that year"). The City Board and the State partially resolved this dispute by increasing various employee salary and benefit items by eight percent. *See* Joint Report, H(2547)83 at 33. Even with this compromise, a dispute remains regarding a total of $1,416,071 for this line item, or an eight percent inflation factor for non-salary items.

The financial adviser stated that

> It is not customary to include an inflation contingency in public school accounting, either for individual budget components or for the budget as a whole. Use of a 'reserve for contingencies' is practiced in the private sector but not in public accounting. When developing a budget for Board approval, school officials generally propose each expenditure item as it is expected to occur during the fiscal year in which it is to be spent.

Financial adviser's report at 2. Although the financial adviser notes that the City Board is free to seek adjustments from the State or the Court, the City Board points out that the approved budget constitutes a "cap" on expenditures for any given year, and that returning to the Court for budget adjustments is not the usual practice in this case. City Board post hearing memorandum at 16. The undersigned does not want to burden the District Court with further budget requests this year. However, the State's concern with auditing and the financial adviser's concern with accountability are legitimate, reasonable concerns which should be sustained. The undersigned will therefore recommend that the Court not approve any remaining disputed amount for the "inflation contingency" line item.

Finally, the State defendants argue against approval of object code 21, "not otherwise classified," which is included in some components of the City Board's budget. State defendants object to these line items because the purposes of the expenditures are not disclosed. After certain disclosures were made, it was stated at the hearing that the State defendants agreed to certain proposed expenditures for this object code. Any post-hearing agreement on these items has not been submitted to the Court. The undersigned recommends that the District Court approve amounts to which there is agreement, and that the parties submit a joint written statement outlining all areas of agreement and areas of disagreement. The undersigned further recommends that subsequent budgets omit this object code and instead provide for these costs in the most closely associated object code, with an explanation of "not otherwise classified" items within those codes.

The undersigned recognizes that the objections to the proposed budgets, as well as agreement to the various budget items, do not waive the State defendants' objections to future budget or program proposals. Arguments by the State defendants that the District Court overstepped the bounds of its authority in approving the Settlement Plan are more appropriately determined

through a motion to amend, modify or vacate that order, or through an appeal from that order. These arguments have not been considered in this Report and Recommendation.

RECOMMENDATION

The undersigned United States Magistrate concludes and recommends to the District Court that the instant budget disputes be resolved as follows:

(a) the budget requests for Kirkwood's magnet school, Clayton's magnet school, University City's magnet schools, Normandy's magnet schools, and the City Board's Foreign Language Secondary magnet school [City Board Ex. 5 at 56] should be approved for separate payment by the State;

(b) the budget request of Hancock Place School District, for a total of $29,220, should be approved for separate payment by the State as requested;

(c) the budget request of Affton School District, for a total of $35,441.09, should be approved as requested for separate payment by the State;

(d) the budget request of Mehlville School District should be approved for separate payment by the State in the amount of $47,122 for a desegregation coordinator and for workshop expenses; the other costs Mehlville sought should not be approved for separate payment by the State;

(e) the budget request of Hazelwood School District should be approved for separate payment by the State in the amount of $103,771; the other costs Hazelwood sought should not be approved for separate payment by the State;

(f) the amount remaining in dispute in line item "inflation contingency" throughout the City Board's budget should not be approved;

(g) with the deletion of the amount required by paragraph (f) above, all amounts requested by the City Board for full payment by the State may be approved;

(h) the City Board's request for approval of Component A902 of its budget should not be approved except for functions 6903 and 1907, which should be paid under ¶5(c) of the July 5, 1983, order; the balance should be paid under ¶5(d) of the order;

(i) the City Board's request for approval of costs to "restore and increase librarians" [City Board Ex. 6 at 4-5] should be amended and approved to fund one full-time librarian for every three elementary schools, and aides supplying the remaining staffing needs in these schools; and the secondary school budget requests for one media specialist for each secondary school and for .5 librarian should be approved;

(j) the City Board's request for postage for the public affairs program should be approved only for one-half the total amount requested;

(k) the City Board's remaining requests for programs to be funded by the City Board and the State equally should be approved upon deletion of the amount in paragraph (f) above;

(l) the State and the City Board should submit a joint written report reflecting all areas of agreement and areas of disagreement, including the reasons therefor, for each amount noted in the City Board's exhibits 2 and 9, regarding the object code "not otherwise classified;" any amounts remaining in dispute for this object code should be disapproved for this year;

(m) each participating district that submitted a budget to which the State defendants originally objected should file another 1983-1984 budget reflecting the amounts approved through agreement with the State or through court order;

(n) the objections of the Liddell plaintiffs should be overruled; and

(o) the District Court should approve all budget requests to which the relevant parties have agreed.

The parties have ten days to file written objections to this Report and Recommendation. Such objections to the extent possible shall be filed jointly.

Respectfully submitted,

David D. Noce
United States Magistrate

Dated this 18th day of August, 1983.

APPENDIX K

U.S. Court of Appeals
for the Eighth Circuit

Nos. 83-1957, 83-2033, 83-2118, 83-2220, 83-2554

Craton Liddell, Etc., Et Al.,

Appellees,

v.

State of Missouri, Et Al., City of St. Louis,
St. Louis Teachers Union, Local 420, Etc.,
North St. Louis Parents & Citizens for Quality Education,
Et Al.,

Appellants.

Appeals from United States District Court
for the Eastern District of Missouri

No. 83-2140

In re: City of St. Louis, Paul Berra and Ronald A. Leggett,

Petitioner.

Petition for Writ of Prohibition

Submitted: November 28, 1983

Filed: February 8, 1984

Opinion of the Court *En banc,* LAY, Chief Judge, HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, and FAGG, Circuit Judges, with JOHN R. GIBSON, Circuit Judge, concurring in part and dissenting in part, and BOWMAN, Circuit Judge, dissenting.

The Caldwell and Liddell plaintiffs, representing black students and parents of the St. Louis City School District, the City School District, and several suburban school districts have entered into a unique and comprehensive settlement agreement designed to further desegregation in the city schools. The United States District Court has approved the agreement and has entered orders to fund the plan.

With the exceptions and limitations noted in the opinion, we approve the agreement and the order entered by the district court with respect to:

> The voluntary transfers of students between the city and suburban schools and the establishment of additional magnet schools and integrative programs in the City School District as necessary to the successful desegregation of the city schools;
>
> The quality education programs for the nonintegrated schools in the City School District;
>
> The quality education programs for all schools in the City School District, but only insofar as these programs have been shown to be necessary for the city to retain its Class AAA rating or to be essential to the successful desegregation of the city schools as hereinafter set forth;
>
> The provisions of the district court's order requiring the State of Missouri, as the primary constitutional violator, to pay the full cost of city to suburb and suburb to city transfers, magnet schools and integrative programs in the city schools, and one-half of the cost of the quality education programs in the city schools. We decline to approve the district court order insofar as it requires the State to fund student transfers between suburban school districts and to fund magnet schools or integrative programs in those suburban districts;

> Improved facilities for the city schools. We require further planning, however, before construction begins, to identify with particularity the projects that will be undertaken, and to take account of a probable decline in the city school population in the next few years.

We outline the steps that the district court must take before it can require an increase in real estate taxes to fund the City Board's share of the quality education component of the plan without a vote of the people, and the steps that the court must take before it can require that bonds be issued to fund the City Board's share of capital improvements without a similar vote. We make it clear, however, that no party found to have violated the Constitution will be permitted to escape its obligation to provide equal educational opportunity to the black children of St. Louis.

We make it clear that the suburban schools meeting the goals set forth in the plan will receive a final judgment declaring that they have satisfied their desegregation obligations.

Finally, we recognize that the settlement agreement and the district court's order will have to be modified to conform to this opinion, and we are aware that the cost of the plan, particularly to the State, will be significantly reduced. In our view, however, the changes do not alter the essential character of the plan, and they preserve its constitutionality. The parties to the settlement agreement are required to decide promptly whether they will accept the changes set forth in this opinion. If they refuse to do so, the interdistrict trial will proceed.

I. PROCEDURAL HISTORY.

In February, 1972, a group of black parents (the Liddell plaintiffs) filed a class action against the City Board, the board members, and school administrators, alleging racial segregation in the city's schools in violation of the fourteenth amendment. The defendants' motion to join the State of Missouri and St.

Louis County (containing the suburban school districts) as codefendants was denied on December 1, 1973. A year later, the parties entered into a consent agreement which provided for an increase in the number of minority teachers and included a pledge by the City Board to attempt to "relieve the residence-based racial imbalance in the City schools." *Liddell v. Bd. of Educ.*, 469 F. Supp. 1304, 1310 (E.D. Mo. 1979).

The case first came before this Court in 1976,[1] when the Caldwell plaintiffs appealed the district court's denial of their right to intervene. We granted intervention, but declined to pass on the constitutionality of the consent decree. *Liddell v. Caldwell,* 546 F.2d 768 (8th Cir.) (*Liddell I*), *cert. denied,* 433 U.S. 914 (1976). We encouraged the United States and State of Missouri to intervene, recommended the creation of a biracial citizens committee to assist in formulating a desegregation plan, and suggested voluntary interdistrict student transfers as one remedial tool. *Id.* at 774.

Desegregation plans were developed and submitted to the district court by the City Board, the Liddell plaintiffs, the Caldwell plaintiffs, and the United States as amicus curiae. Before approving any plan, the district court ordered a trial to determine whether there had been a constitutional violation and to frame a remedy if a violation was found. The United States, the City of St. Louis, and two white citizens' groups were allowed to intervene as plaintiffs. The State of Missouri, the State Board of Education, and the Commissioner of Education were added as defendants. The district court found no constitutional violation, and held that the City Board had achieved a unitary school system in 1954-56 through its "neighborhood school policy." *Liddell v. Bd. of Educ., supra,* 469 F. Supp. at 1360-1361.

---

[1] We recounted the procedural history of this litigation in *Liddell v. Bd. of Educ.*, 677 F.2d 626, 628 n.1 (8th Cir. 1982) (*Liddell V*), *cert. denied,* 103 S. Ct. 172 (1983) and *Adams v. United States,* 620 F.2d 1277, 1281-1283 (8th Cir.), *cert. denied,* 449 U.S. 826 (1980).

We reversed the district court in *Adams v. United States,* 620 F.2d 1277 (8th Cir.) (*en banc*), *cert. denied,* 449 U.S. 826 (1980),[2] holding that the City Board and the State were jointly responsible for maintaining a segregated school system. In reaching this decision, we noted that the Missouri State Constitution had mandated separate schools for "white and colored children" through 1976, that the State had not taken prompt and effective steps to desegregate the city schools after *Brown v. Bd. of Educ.,* 347 U.S. 483 (1954) (*Brown I*), and that the City Board's policies and practices since 1956 had contributed to the existing segregation. We remanded to the district court and directed that the schools be promptly desegregated. We suggested the following techniques:

> (1) Developing and implementing compensatory and remedial educational programs. * * *
>
> (2) Developing and implementing programs providing less than full-time integrated learning experiences.
>
> (3) Developing and implementing a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County. * * *
>
> (4) Maintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education.
>
> (5) Establishing an Educational Park.
>
> (6) Continuing and expanding a policy of permissive transfers in the district.

Adams v. United States, supra, 620 F.2d at 1296-1297 (citations omitted).

---

[2] We also ruled on several procedural questions in the interim between *Liddell I* and *Adams, see Liddell v. Caldwell,* 553 F.2d 557 (8th Cir. 1977) (*Liddell II*).

After holding extensive evidentiary hearings, the district court approved a system-wide desegregation plan for the city schools beginning with the 1980-81 school year. *Liddell v. Bd. of Educ.*, 491 F. Supp. 351 (E.D. Mo. 1980). This plan included a comprehensive program of exchanging and transferring students between the city and suburban schools, the establishment of magnet schools and integrative programs, and a quality education component. In approving the plan, the district court concluded:

> In sum, the State defendants stand before the Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty. Their efforts to pass the buck among themselves and to other state instrumentalities must be rejected[.]

Id. at 359.

We affirmed the district court's plan on appeal. *Liddell v. Bd. of Educ.*, 667 F.2d 643 (8th Cir. 1981) (*Liddell III*), *cert. denied*, 454 U.S. 1081, 1091 (1982). In so doing, we decided that it was constitutionally permissible to allow a number of all-black schools to remain in the city. We noted that no all-white schools would remain, that a plan of voluntary interdistrict transfers would be initiated, that magnet schools and integrative programs would be established, and that a substantial part of the desegregation budget would be spent to improve the quality of education in the all-black schools. We affirmed the State's liability for desegregation costs and remanded for continued implementation of the plan.

Questions about this plan's implementation came before us in early 1982, when the State again protested its liability for certain desegregation costs. *Liddell v. Bd. of Educ.*, 677 F.2d 626 (8th Cir.) (*Liddell V*), *cert. denied*, 103 S. Ct. 172 (1982).[3] We affirmed the district court's allocation of costs, placing one-half

---

[3] We issued a procedural order in the interim. *Liddell v. Bd. of Educ.*, 693 F.2d 721 (8th Cir. 1981) (*Liddell IV*).

of the actual desegregation costs on the State. We also required the State to pay the costs of voluntary interdistrict transfers and the costs of merging city and county vocational educational programs. Meanwhile, the City Board and the Liddell and Caldwell plaintiffs continued to seek the consolidation of the city and county schools into a single integrated school district on the theory that the suburban schools had also violated the Constitution. They successfully moved to add the county school districts and St. Louis County officials as defendants to this litigation. We noted that the suburban schools could not be held as constitutional violators without further evidentiary hearings and findings by the district court. We again noted that the State and City Board—already adjudged violators of the Constitution—could be required to fund measures designed to eradicate the remaining vestiges of segregation in the city schools, including measures which involved the voluntary participation of the suburban schools. *Liddell V, supra,* 677 F.2d at 641.[4]

The district court entered an order on August 6, 1982, which disclosed the mandatory interdistrict plan it would impose in the event the suburban school districts were found liable for constitutional violations. This plan would create one unified metropolitan school district with a uniform tax rate. The court then scheduled interdistrict liability hearings.

---

[4] We suggested that

> the district court could (1) require the state and the city to take additional steps to improve the quality of the remaining all-black schools in the City of St. Louis; (2) require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located; (3) require that additional part-time programs be established at state expense to provide for more integrative experiences for students in all-black city schools, including programs which would involve voluntary participation by suburban schools; and (4) require the state to provide additional incentives for voluntary interdistrict transfer.

Liddell V, supra, 677 F.2d at 641-642 (footnote omitted).

Before these hearings were held, however, the City Board, the Liddell plaintiffs, the Caldwell plaintiffs, and all twenty-three county school districts developed a settlement agreement with the assistance of a court-appointed expert and filed a proposed consent decree on March 30, 1983. This agreement settled the plaintiffs' interdistrict claims against the county school districts, and also enabled the State and City Board to take important steps to desegregate the city schools through the voluntary participation of the county schools, as we outlined in *Liddell V.*

The settlement plan has several components. It provides for voluntary interdistrict transfers between city and suburban schools and includes fiscal incentives to encourage these transfers. Each county school district which receives enough transfers within five years to satisfy its desegregation obligations under the plan will receive a final judgment. Affirmative hiring requirements and voluntary teacher transfers are included in the plan to assure it will have a substantial impact in the county schools. To attract white student transfers to the city, and also to provide remedial programs for city students, the plan creates additional magnet schools in the city and the county, and has several compensatory and remedial education components. These latter components are designed to improve the quality of education in the city schools, and to make special improvements in the all-black schools.

After the parties filed the settlement agreement, the district court conducted hearings in April and May of 1983 to determine whether the settlement plan is fair, reasonable, and adequate. In its July 5, 1983, order, the court concluded the plan met these standards and allocated the costs of the plan between the State and City Board. *Liddell v. Bd. of Educ.*, 567 F. Supp. 1037 (E.D. Mo. 1983). The State is totally responsible for the costs of the voluntary interdistrict transfers, the magnet schools, and various part-time and alternative integrative programs. Further, the State will pay one-half of the cost of the quality improvements in the city schools and one-half of the capital improvements required by the plan. The City Board is required to pay the remaining costs.

The district court ordered the City Board to submit a bond issue to its voters before February 1, 1984, to fund its share of the capital improvements required under the plan. In the event this bond issue failed to obtain the necessary two-thirds vote the court reserved authority to consider an appropriate order to fund these capital improvements.[5] The district court also deferred a scheduled reduction in the City Board's operating levy otherwise required by Mo. Rev. Stat. § 164.013 (Proposition C) insofar as this revenue is necessary to fund the City Board's share of desegregation costs. It further reserved authority to order an increase in the City Board's property tax rate, following notice and a hearing on the amount, if the revenue necessary to fund the City Board's constitutional obligation to desegregate the city schools is not otherwise available.

Several weeks after the district court entered its order approving the settlement, the State filed a motion to stay the implementation of the plan. The City of St. Louis filed a petition for a writ of prohibition seeking the same result. The district court denied both of these motions, and the State and City of St. Louis appealed to our Court. In an en banc order, *Liddell v. Missouri,* 717 F.2d 1180 (8th Cir. 1983) (*Liddell VI*), we denied the stay with certain exceptions. We froze the number of interdistrict transfers and deferred any further district court action concerning the City Board's property tax rate. We also deferred action on the writ of prohibition until we considered the case on its merits.

Appeals were filed from the district court's July 5, 1983, order by the State of Missouri, the City of St. Louis, the North St. Louis Parents and Citizens for Quality Education, and the St. Louis Teachers Union.

---

[5] The two-thirds majority is required by Mo. Const. art. VI, § 26(b). This bond issue election was held on November 8, 1983, and it failed, receiving fifty-five percent voter approval.

The State contends on appeal that the district court erred: (1) in approving additional interdistrict transfers of students, and requiring the State to pay the full cost of the additional transfers; (2) in approving additional magnet schools and part-time integrative programs, and requiring the State to pay their full cost; (3) in approving certain programs to improve the quality of education in the city schools, and requiring the State to pay one-half the cost of these programs; and (4) in ordering a deferral of scheduled property tax reduction for the city schools, and in stating that it would order a further increase in property taxes to fund the City Board's share of the cost of the quality education programs in the city schools.

The City of St. Louis joins in questioning the authority of the district court to enter the taxing order referred to in (4) above.

The St. Louis Teachers Union contends that the district court erred in denying its motion to intervene.

The Northside Parents Organization contends that the district court erred in failing to provide more extensive relief to the black students who would remain in the nonintegrated schools.

The United States did not file a notice of appeal or cross-appeal. It did file a brief and it was permitted to argue its position before the Court *en banc*. It appears to argue that many of the programs authorized by the district court may be necessary to desegregate the city schools, but questions whether the district court's factual findings are sufficient to support all aspects of the district court's remedial order. It asks this Court to remand to the district court to correct the alleged deficiencies.[6]

---

[6] We question whether the United States should be heard as a party. Parties who do not appeal from a trial court judgment cannot be heard to attack that judgment, either to enlarge their own rights, or to lessen the rights of their adversary. *See Morley Construction Co. v. Maryland Casualty Co.*, 300 U.S. 185, 190-191 (1937); *United States*

II. INTERDISTRICT TRANSFERS.

On July 2, 1981, the district court entered an order authorizing voluntary interdistrict transfers and requiring the State to pay the cost of the transfers. The program was initiated at the beginning of the 1981-82 school year, and by the end of the 1982-83 school year, it had grown so that 873 city students were attending county schools and 318 county students were attending city schools. All but seven of the 318 were enrolled in city magnet schools. The State of Missouri paid the cost of these transfers, including transportation costs and fiscal incentives, to the sending and receiving schools.

The settlement agreement calls for an expanded program of interdistrict transfers. City-to-county transfers of black students will be permitted to grow incrementally until they reach 15,000. No limit is placed on the county-to-city transfers, but the number is not expected to exceed 3,000. These transfers are expected to be primarily to city magnet schools and programs. Transfers between county districts are also permitted. All student transfers are voluntary.

The State's funding obligations remain as they were under the July 2, 1981, order: It must pay transportation costs and must pay to the receiving district for each transferring student an amount equal to the receiving district's cost per pupil, less State aid and trust fund allocation. It is further required to provide fiscal incentives to sending districts which may elect payment

---

v. American Railway Express Co., 265 U.S. 425, 435 (1924); *Stella v. DePaul Community Health Center, Inc.*, 642 F.2d 258, 261 (8th Cir. 1981); *Johnson v. United States Fire Ins. Co.*, 586 F.2d 1291, 1294 n.7 (8th Cir. 1978); *Tiedeman v. Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 513 F.2d 1267, 1271-1273 (8th Cir. 1975).

Here, the United States is requesting that the district court's order be vacated and that the case be remanded for further findings. This result would "lessen the rights" of the parties to the settlement agreement. In practical terms, however, we have considered the United States's position as an amicus curiae.

under one of two formulas: either one-half of the State aid the district would have received had the student not transferred; or, beginning in 1984-85, if a district sends more students than it receives, State aid based on the district's enrollment for the second prior year. To be eligible for transfer, students of good standing must be in the racial majority in their home districts and must transfer to districts where they would be in the racial minority.

After approval of the settlement agreement, transfers rose dramatically. During the current school year, 2,294 city students have transferred to suburban districts and three hundred and eighty-nine suburban students have transferred to city schools. Thirty-four suburban students have transferred to other suburban districts. One thousand nine-hundred and sixty-five additional city-to-county transfer applications are on file.

The settlement agreement provides that participating districts will receive a final judgment releasing them from further liability if they achieve the plan ratio[7] within five years. Litigation is stayed during this period. If the school district does not reach the plan ratio, litigation can be renewed after first pursuing various negotiating procedures. If the liability of any individual school district is litigated, the plaintiffs must prove liability and may not seek reorganization or consolidation of school districts, nor may they seek a minority enrollment exceeding twenty-five percent of the school district.

---

[7] Under the Plan Ratio, * * * a suburban school district would accept up to as many black transfer students as would constitute 15 percent of the total student population in that district, but no suburban school district would be required to accept more black transfer students than would raise the overall percentage of blacks in the total student population higher than 25 percent.

Settlement Agreement, I-2.

The State argues that the district court order approving the settlement agreement and requiring the State to pay the full cost of interdistrict transfers cannot be sustained because it imposes an interdistrict remedy based on an intradistrict violation. We disagree for two reasons: First, the issue has previously been decided adversely to the State; second, the interdistrict transfers are intrinsic to an effective remedy for the intradistrict violation and are justified by precedent.

A. THE PROPRIETY OF THE DISTRICT COURT'S ORDER WITH RESPECT TO INTERDISTRICT TRANSFERS HAS BEEN PREVIOUSLY DECIDED.

This Court has repeatedly authorized the interdistrict transfer of students as a fundamental element of an effective remedy for the unconstitutional segregation of the city schools. In *Adams v. United States, supra,* 620 F.2d at 1296, we specifically approved the development and implementation of "a comprehensive program of exchanging and transferring students with the suburban school districts of St. Louis County."

In *Liddell III, supra,* 667 F.2d at 650, we rejected the State's argument that the district court was without authority to formulate an interdistrict plan without finding an interdistrict violation. We also noted that voluntary interdistrict pupil exchanges "must be viewed as a valid part of the attempt to fashion a workable remedy within the City." *Id.* at 651. In an order appended to that opinion, we noted that the State had been "judicially determined to be a primary constitutional violator," and we held that an interdistrict transfer plan would be salutary and would be entirely enforceable against the State. *Id.* at 659.

Finally, in *Liddell V, supra,* 677 F.2d at 630, we reiterated our conclusion that, because the State had been found a primary constitutional wrongdoer, it can "be required to take those actions which will further the desegregation of the city schools

even if the actions required will occur outside the boundaries of the city school district." After discussing broad-based interdistrict proposals and dismissing them as unsuitable, we addressed the proper limits of the district court's equitable remedial authority:

> [T]he district court can require the existing defendants—the state and city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the voluntary participation of the suburban schools. For example, the district court could * * * (4) require the state to provide additional incentives for voluntary interdistrict transfer.

Id. at 641-642 (footnote omitted).

We did not act hastily or arbitrarily in approving voluntary interdistrict transfers. We outlined the reasons for our decision in *Adams v. United States, supra,* 620 F.2d at 1291-1297. We reviewed the parties' proposed remedial alternatives, several of which involved extensive cross-busing between city schools. The Caldwell plaintiffs proposed a seventy-five percent black/twenty-five percent white racial mix within the district. The Liddell plaintiffs, through their expert witness, Dr. David Colton, proposed a four-tier division of the schools by age groups, which would integrate schools above fourth grade to achieve a sixty percent/forty percent or fifty-five percent ratio of black to white students. All whites above third grade would attend integrated schools and all blacks would receive at least one-third of their education above third grade in integrated schools. The Department of Justice, through its expert witness, Dr. Gary Orfield, proposed maintenance and expansion of integration in all grades, voluntary interdistrict and intradistrict transfers, magnet schools, integration of personnel, and community involvement. The Board of Education proposed the creation of integrated junior high schools which would funnel

students to high schools in a balanced fashion. Magnet schools would supplement these junior high schools. The white parents proposed that the schools be left as they were or, alternatively, that the city and county schools be merged and a comprehensive plan for interdistrict student transfers be developed.

Of the four plans submitted by the parties, we found that only the Colton and Orfield plans were constitutionally permissible. We rejected the City Board's plan as too little too late: elementary schools would remain entirely segregated and desegregation of the upper tiers would be delayed four to seven years. We rejected the Caldwell plan because the record supported the district court's finding that implementation of the plan would probably result in an all-black school system within a few years. We found that the Colton plan was permissible with some substantial changes, but that plan was discarded by the district court after it found that the plan was "educationally unsound" and that it would "fail to achieve effective desegregation." *Liddell v. Bd. of Educ., supra,* 491 F. Supp. at 356.

The approach suggested by the United State's expert, Dr. Orfield, was ultimately adopted by the district court as the plan that held "the promise of providing 'the greatest possible degree of actual desegregation, taking into account the practicalities of the situation.' " *Id.* at 359, citing *Davis v. Bd. of School Comm'rs,* 402 U.S. 33, 37 (1971). We reaffirmed our support of the Orfield plan in *Liddell III, supra,* 667 F.2d at 649-653. We noted that it was the only constitutionally permissible plan submitted that could achieve stable, effective integration while minimizing transportation of students and maintaining integrated schools in integrated neighborhoods. *Id.* at 650.

The State defendants have raised the question of remedial scope twice before the Supreme Court. On June 17, 1981, the State filed a petition for certiorari from our panel opinion in *Liddell III.* In that petition, the State argued that there was no basis for State liability:

> The evidence in this case indicates that the State of Missouri took the necessary and appropriate steps to remove the legal underpinnings of segregated schooling as well as affirmatively prohibiting such discrimination.

State's Petition for Certiorari, No. 80-2152, June 17, 1981, at 17.

It further argued:

> The District Court exceeded its authority in ordering the preparation of a plan of voluntary pupil exchanges between the St. Louis School District and nonparty school districts because (1) an interdistrict violation has neither been pleaded nor proven, and (2) the District Court cannot, consistent with *Milliken v. Bradley,* order the State of Missouri to fund such a voluntary plan simply on the basis of an intradistrict violation.

Id. at 20.

The Supreme Court denied certiorari. *Missouri v. Liddell,* 454 U.S. 1091 (1981).

Not satisfied with this answer, the State raised the same arguments again before our Court in *Liddell IV* and *Liddell V.* Unsuccessful in our Court, the State filed a second petition for certiorari with the Supreme Court on April 30, 1982. The State again argued that

> ordering an inter-district remedy [the 12(a) voluntary transfers, funded by the State] without first finding an inter-district violation and inter-district effect is in conflict with this court's decision in *Milliken v. Bradley I* [and *Hills v. Gautreaux*].

State's Petition for Certiorari, No. 81-2022, April 30, 1982, at 7; *see also id.* at 10.

Again, the Supreme Court denied certiorari. *Missouri v. Liddell,* 103 S. Ct. 172 (1982). Both of the State's petitions for certiorari came after the Supreme Court's decision in *Hills v. Gautreaux,* 425 U.S. 284 (1976).[1]

As a result of our previous holdings and of the Supreme Court's inaction, the use of interdistrict transfers is settled as law of the case. While this doctrine does not foreclose this Court from correcting its errors, it prevents repeated litigation of the same issue and promotes uniformity of decision. *In Re Exterior Siding and Aluminum Coil Antitrust Litigation,* 696 F.2d 613, 616 (8th Cir. 1982), *vacated en banc,* 705 F.2d 980 (8th Cir. 1983), *cert. denied,* 104 S. Ct. 204 (1983). We will reconsider a previously decided issue only on a showing of clear error and manifest injustice. *United States v. Unger,* 700 F.2d 445, 450 n.10 (8th Cir.), *cert. denied,* 104 S. Ct. 339 (1983); *Wrist-Rocket Mfg. v. Saunders Archery Co.,* 578 F.2d 727, 730-731 (8th Cir. 1978).

We are loath to retract our previous declarations on settled issues when a case returns on appeal; to do so ignores important considerations of judicial economy and ignores our interest in protecting the settled expectations of parties who have conformed their conduct to our guidelines. In this case, our conclusions that State-funded interdistrict transfers are an appropriate remedy is strengthened by our previous invocation of the law of the case doctrine. *Liddell V, supra,* 677 F.2d at 629-630.

The State argues that we should not be bound by our earlier decisions because the magnitude of the proposed plan, with

---

[1] Although denial of certiorari does not necessarily imply approval of the decision below on the merits, this Court has recognized that denial of certiorari is, under some circumstances, a fact which "cannot be overlooked." *Wells v. Meyer's Bakery,* 561 F.2d 1268, 1274-1275 (8th Cir. 1977). *See also United States v. Kras,* 409 U.S. 434, 443 (1973); *United States v. Thompson,* 685 F.2d 993, 999 (6th Cir.), *cert. denied,* 103 S. Ct. 494 (1982).

respect both to cost and numbers of students, distinguishes it from existing plans. Neither this Court nor the district court placed any limitation on the number of students that could transfer under the plan in existence during the last two school years, nor were we requested to do so. Moreover, it was clear that the number of transfers would have to be large if the opportunity for an integrated education was to be provided to a significant number of the 30,000 black students that remained in the all-black schools in the city.

Notwithstanding our view that the issues regarding interdistrict transfers have been heretofore decided, we again reach the merits of the matter and, alternatively, hold that the plan and the funding order, as they relate to interdistrict transfers, meet constitutional standards.

B. THE DISTRICT COURT'S ORDER WITH RESPECT TO INTERDISTRICT TRANSFERS MEETS CONSTITUTIONAL STANDARDS.

Since *Brown v. Bd. of Educ.*, 349 U.S. 294, 300 (1955) (*Brown II*), principles of equity have guided courts in devising remedies to eradicate segregation and its effects. Yet for equitable remedies to pass constitutional muster, they must conform to three overlapping criteria.

> [First], the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation. * * * The remedy must therefore be related to "the *condition* alleged to offend the Constitution." * * * Second, the decree must indeed be *remedial* in nature, that is, it must be designed as nearly as possible "to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." * * * Third, the federal courts * * * must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution.

Milliken v. Bradley, 433 U.S. 267, 280-281 (1977) (*Milliken II*) (citations and footnotes omitted).

Examination of voluntary interdistrict transfers confirms that, as a remedy for an intradistrict violation, such transfers comply with constitutional standards.

1. The remedy was closely tailored to the nature and scope of the violation.

The Missouri Constitution requires the State to provide a free public education. Mo. Const. art. 9, § 1(a). The State supervises instruction, distributes funds for public education to local school districts, approves school bus routes, provides free textbooks, and passes on applications by school districts for federal aid. *See* Mo. Rev. Stat. §§ 161.092, 163.021, 163.031, 163.161, 170.051, 170.055; and *Liddell v. Bd. of Educ., supra,* 469 F. Supp. at 1313-1314.

Before the Civil War, Missouri prohibited the creation of schools to teach reading and writing to blacks. Act of February 16, 1847, § 1, 1847 Mo. Laws 103. State-mandated segregation was first imposed in the 1865 Constitution, Article IX § 2. It was reincorporated in the Missouri Constitution of 1945: Article IX specifically provided that separate schools were to be maintained for "white and colored children."[9] In 1952, the Missouri Supreme Court upheld the constitutionality of Article IX under the United States Constitution. *See State ex rel. Hobby v. Disman,* 250 S.W.2d 137, 141 (Mo. 1952). Article IX was not repealed until 1976. *Adams v. United States, supra,* 620 F.2d at 1280. Under the segregated system, the State bused suburban black students from St. Louis County into the city's black schools to maintain the dual system. *Id.,* at 1281. The city schools remained largely segregated until this Court's decision in *Adams.*

---

[9] In addition, state law provided separate libraries, public parks, and playgrounds "for the use of white and colored persons," Mo. Rev. Stat. 10474 (1939), and established separate "institutes for colored teachers," Mo. Rev. Stat. 10632 (1939).

It is clear from the foregoing that the State's presence in public education is immense and that the State's Constitution and statutes mandated discrimination against black St. Louis students on the broadest possible basis. It is equally clear that the discriminatory policies continued after the Supreme Court decided *Brown I, supra,* in 1954. Given the breadth of the State's violation, it was appropriate for the district court to mandate an equally comprehensive remedy. The potential for integration within the district, however, was limited by the fact that almost eighty percent of the students were black, and by the district court's finding that if it integrated the city schools by imposing an eighty/twenty ratio in each school, an all-black school system would probably result. With that in mind, the district court properly considered the alternative of voluntary transfers to county districts. The opportunity for effective integration became a reality when the county schools agreed to accept the voluntary transfer of several thousand black students.[10]

2. The remedy restores the victims of discrimination as nearly as possible to the position they would have occupied absent that discrimination.

We have heretofore enumerated the alternative remedies suggested by the parties, and we have explained why the district court selected a remedy which included voluntary interdistrict transfers and why this Court approved that remedy. (*See supra* pp. 25-26.)

We are met for the first time on this appeal with a new, or at least a more precisely framed, argument against interdistrict transfers. The State asserts that the district court cannot require the State to fund extensive interdistrict transfers unless the

---

[10] We also note that the remedial limits imposed by *Dayton Bd. of Educ. v. Brinkman,* 433 U.S. 406 (1977), are inapposite to this case. The findings of *de jure* segregation which distinguish this case were absent in *Dayton.* In that case, the Supreme Court considered the proper scope of an equitable remedy for three isolated instances of discrimination.

record supports and the district court finds that the black children of St. Louis would have attended schools in the county had it not been for the State's constitutional prohibition against black and white students attending schools together.[11] Nothing in the cases cited by the State[12] suggests or requires us to hold that the district court abused its discretion when it required the State to fund interdistrict transfers of students to consenting districts. Indeed *Milliken II* states that the remedy should correct conditions that "flow from such a violation" and should return victims "to the position they would have enjoyed in terms of education," but for the violation. *Milliken II, supra,* 433 U.S. at 282. This remedy does precisely that: It returns the largest number of victims to integrated schools and provides integrative opportunities and compensatory and remedial programs for those who cannot participate in the transfer plan. As the primary constitutional violator, the State is in no position to complain that some of the victims may elect to transfer to integrated schools in another school district that is willing to accept them.

---

[11] The United States joins in this argument. In earlier proceedings before this Court and the United States Supreme Court, however, it supported the district court's remedial use of voluntary interdistrict transfers. It argued that voluntary interdistrict transfers properly remedied the State's violation, distinguishing them from the overbroad remedy in *Milliken I,* which involved "*Imposition* of relief upon non-party school districts." It asserted that the district court can "order those who have been found liable to make efforts to *persuade* those nonparty districts to cooperate voluntarily." U.S. Brief in Opposition to State's Petition for Certiorari, *Missouri v. Liddell,* No. 80-2152, Aug. 17, 1971, at 14 (emphasis in original).

In a subsequent brief, the United States again distinguished the interdistrict transfers from the impermissible interdistrict remedy in *Milliken I.* Moreover, in endorsing interdistrict transfers, it stated that, under *Hills,* "the State parties can and should be required to take appropriate remedial action for the constitutional violations in which they participated." U.S. Brief in Opposition to the State's Petition for Certiorari, *Missouri v. Liddell,* No. 81-2022, April 30, 1982, at 7,8.

[12] *Dayton Bd. of Educ. v. Brinkman,* 434 U.S. 526 (1979)(*Dayton II*); *Columbus Bd. of Educ. v. Penick,* 443 U.S. 449 (1979); *School*

In our view, *Hills v. Gautreaux* provides precedent for the remedy mandated by the district court. In that case, the Supreme Court considered a remedy against the United States Department of Housing and Urban Development (HUD) for discrimination in public housing in the City of Chicago. The United States Court of Appeals for the Seventh Circuit had reversed the district court's dismissal and ordered the district court on remand to enter summary judgment against HUD for violations of the Fifth Amendment and the Civil Rights Act of 1964 by knowingly sanctioning and assisting the Chicago Housing Authority's (CHA) racially discriminatory public housing program. *Hills v. Gautreaux, supra,* 425 U.S. at 291-292. Thereafter, the plaintiffs requested that the district court require HUD to provide public housing outside Chicago's city limits. The district court refused, holding that the wrongs were committed solely against city residents and within the city's boundaries.

On appeal, the Court of Appeals for the Seventh Circuit reversed and the Supreme Court affirmed. The Supreme Court stated:

> We reject the contention that, since HUD's constitutional and statutory violations were committed in Chicago, *Milliken* precludes an order against HUD that will affect its conduct in the greater metropolitan area. The critical distinction between HUD and the suburban school districts in *Milliken* is that HUD has been found to have violated the Constitution. That violation provided the necessary predicate for the entry of a remedial order against HUD and, indeed, imposed a duty on the District Court to grant appropriate relief. * * * Our prior decisions counsel that in

---

District of Omaha v. United States, 433 U.S. 667 (1977); *Dayton Bd. of Educ. v. Brinkman,* 433 U.S. 406 (1977); *Milliken v. Bradley,* 433 U.S. 267 (1977) (*Milliken II*); *Pasadena City Bd. of Educ. v. Spangler,* 427 U.S. 424 (1976); *Washington v. Davis,* 426 U.S. 229 (1976); *Keyes v. School Dist. No. 1,* 413 U.S. 189 (1973); *Swann v. Charlotte-Mecklenburg Bd. of Educ.,* 402 U.S. 1 (1971).

> the event of a constitutional violation "all reasonable methods be available to formulate an effective remedy," *North Carolina State Board of Education v. Swann,* 402 U.S. 43, 46, and that every effort should be made by a federal court to employ those methods "to achieve the greatest possible degree of [relief], taking into account the practicalities of the situation." *Davis v. School Comm'rs of Mobile County,* 402 U.S. 33, 37. As the Court observed in *Swann v. Charlotte-Mecklenburg Board of Education:* "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."

Hills v. Gautreaux, supra, 425 U.S. at 297 (emphasis added; citations omitted).

The Supreme Court then discussed *Milliken v. Bradley,* 418 U.S. 717 (1974) (*Milliken I*), and the limitation it imposed on the scope of the federal courts' equity powers. In *Milliken I,* the respondents alleged that the Detroit school system was racially segregated and they sought the creation of a unified school district as a remedy. Without finding constitutional violations by the suburban districts and without finding significant segregative effects in those districts, the district court ordered the consolidation of the Detroit school system with fifty-three independent suburban school districts. After the Court of Appeals for the Sixth Circuit affirmed this desegregation order, the Supreme Court reversed, holding that the order exceeded the district court's equitable powers: the courts must tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation." *Id.* at 744.

In evaluating the remedy in *Hills* according to *Milliken I's standards, the Supreme Court noted that nothing in Milliken I* "suggests a *per se* rule that the federal courts lack authority to order parties found to have violated the Constitution to undertake remedial efforts beyond the municipal boundaries of the ci-

ty where the violation occurred." *Hills v. Gautreaux, supra,* 425 U.S. at 298 (footnote omitted). In *Hills,* the Supreme Court approved the remedy because it did not coerce uninvolved governmental units and because CHA and HUD had the authority to operate outside Chicago's city limits. *Id.*

Justification for requiring the State to fund transfers between city and county schools is stronger than the justification for the remedy in *Hills.* Its role in education is much broader than HUD's role in housing. *See supra* p. 30. In addition, the breadth, gravity and duration of the State's violation here was much greater. The violation scarred every student in St. Louis for over five generations and it gained legitimacy through the State Constitution and through the State's preeminent role in education. In following the Supreme Court's guidelines in *Hills,* we echo its conclusion concerning *Milliken I.* If we barred the use of interdistrict transfers solely because the State's consitutional limitation took place within the city limits of St. Louis, we would transform

> *Milliken [I]'s* principled limitation on the exercise of federal judicial authority into an arbitrary and mechanical shield for those found to have engaged in unconstitutional conduct.

Hills v. Gautreaux, supra, 425 U.S. at 300.

> 3. The district court's order with respect to interdistrict transfers does not infringe on State or local government autonomy.

The Supreme Court in *Hills v. Gautreaux, supra,* 425 U.S. at 298, has interpreted *Milliken I* to mean that district courts may not restructure or coerce local governments or their subdivisions. This remedy does not threaten the autonomy of local school districts; no district will be coerced or reorganized and all districts retain the rights and powers accorded them by state and federal laws. *See Hills v. Gautreaux, supra,* 425 U.S. at 305-306.

We also find unpersuasive the State's argument that funding this remedy will compel other budget cuts, which would interfere with the autonomy of state and local governments. If we accepted this argument, violators of the Constitution could avoid their remedial responsibility through manipulation of their budgets, leaving victims without redress. Simply put, parsimony is no barrier to a constitutional remedy; "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them." *Watson v. Memphis,* 373 U.S. 526, 537 (1963).[13]

Interdistrict transfers between the city and the county schools may proceed pursuant to the settlement agreement, subject to the following exceptions:

> (1) No additional transfers will be permitted for the balance of the current school year. Such transfers would disrupt the education of students in both sending and receiving schools. Planning and recruitment may continue so that enrollment may reach the levels contemplated in the settlement agreement.
>
> (2) City-to-county transfers will be limited to a total of 6,000 students in the 1984-85 school year and to not more

---

[13] The district court's funding order poses no eleventh amendment problems. The State relies on *Edelman v. Jordan,* 415 U.S. 651, 663 (1974), to avoid its liability for a remedy that requires the expenditure of state funds where that remedy is allegedly overbroad. The Supreme Court in *Milliken II* applied the prospective compliance exception developed in *Ex Parte Young,* 209 U.S. 123 (1908), which "permits federal courts to enjoin state officials to conform their conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state treasury." *Milliken II, supra,* 433 U.S. at 289. After elucidating the three criteria discussed earlier, the Supreme Court in *Milliken II* found that the plan under review there was constitutional. The interdistrict transfer plan under consideration in this case conforms to the same three criteria.

than 3,000 additional total transfers in each succeeding school year until the limit of 15,000 is reached. A shortfall of enrollment in one year may be made up in succeeding years.

(3) In the event the number of applicants for transfer exceeds the spaces available, priority shall be given to applicants who would otherwise attend an all-black school.

(4) In *Liddell V, supra,* 677 F.2d at 631-632, we warned of the need for vigilance to control the costs of desegregation. Budgetary constraints persist, and so does the need for frugality. We are unwilling, however, to accept the State's suggestion that "complementary zones" to established, which would effectively limit schools that transferees could attend. This would destroy the voluntary nature of the plan. Nevertheless, constant effort and careful planning must be made by all concerned to limit the costs of transportation, insofar as is consistent with the Constitution and the voluntary nature of the plan.

C. COUNTY TO COUNTY TRANSFERS.

Although we approve State funding of transfers of students between the city and county, we are unable to give similar approval to the funding of transfers of students between county districts. We emphasize again that the objective of transfers between the city and county is the eradication of segregation within the city. Such transfers are closely tailored to the violation and are clearly remedial with respect to that violation, according to the standards announced in **Milliken II** which were discussed above. Transfers between county districts, however, are not geared to remedy the violation found within the city. Nor does the record establish that intercounty transfers will materially assist in desegregating the city schools.

We recognize that some suburban school districts have majority black enrollments and others have nearly all-white

enrollments. We acknowledge that the suburban districts would achieve a further degree of desegregation by such transfers. We neither prohibit nor discourage such voluntary transfers between county schools but we cannot compel the State to pay for them absent a finding of an interdistrict violation.

III. MAGNET SCHOOLS AND INTEGRATIVE PROGRAMS.

A. MAGNET SCHOOLS.

The district court and this Court previously authorized the creation of magnet schools and integrative programs. About 8,000 students (one-half of whom were blacks) participated in these schools and programs in the 1982-83 school year. Three hundred participants resided in the county. No one suggests that the magnet schools or integrative programs be discontinued.

The settlement agreement approved by the district court provides for the expansion or replication of existing magnet schools and programs and the development of new magnet schools and programs—in both the city and the county—with total enrollment to reach 20,000 students, twelve to fourteen thousand to be enrolled in city magnets and the balance in county magnets. The new schools would be phased in over the 1983-87 period.

To be eligible for transfer to the magnet schools, students in good standing must be in the racial majority in their home districts and must meet the qualifications for the magnets. Special eligibility requirements allow white students from the city to attend city magnets if the students now attend schools that are less than ten percent or over fifty percent white.[14] Black

---

[14] Our affirmance in this case does not preclude the district court from reconsidering these special requirements—to the extent that they permit a white student attending a school with less than ten percent white enrollment to transfer to a city magnet school—in light of decisions by the Supreme Court and this Court. The district court may reconsider these requirements upon the request of any party.

students in majority black districts are eligible to attend magnet schools and programs in other black majority districts if seats remain open after all of the host district's black students have been accommodated.

The State argues that insufficient attention has been devoted to developing a curriculum designed to attract county students. It also objects to being required to pay the full cost of building and operating the new magnets.

Before reviewing the State's specific arguments, we observe that the utility and propriety of magnets as a desegregation remedy is beyond dispute. In *Adams v. United States, supra,* 620 F.2d at 1296-1297, we evaluated the remedies we had previously found to be constitutionally permissible. We recommended "[m]aintaining existing magnet and specialty schools, and establishing such additional schools as needed to expand opportunities for an integrated education." *Id.* at 1297. We reiterated our approval of magnet schools in *Liddell III, supra,* 667 F.2d at 658 (emphasis omitted), where, in considering an intradistrict remedy, we directed the city and suburban school districts to undertake a "study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the city. * * * The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved." Finally, in *Liddell V, supra,* 677 F.2d at 642, we reaffirmed our conclusion that the district court could "require that additional magnet schools be established at state expense within the city or in suburban school districts with the consent of the suburban districts where the schools would be located." As with interdistrict transfers, our previous determinations in this case concerning magnet schools are law of the case.

Had we not in our previous decisions explicitly examined and approved the use of magnet schools and programs, the weight of precedent would nevertheless oblige us now to approve their

use. In *Milliken II, supra,* 433 U.S. at 272, the Supreme Court mentioned magnet schools as a supplement to the compensatory and remedial programs which it approved in that case. Dissenting in another case, Justice Powell observed that the Supreme Court in *Swann v. Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U.S. at 26-27, implicitly encouraged the use of magnet schools:

> Incentives can be employed to encourage [majority-minority] transfers, such as creation of magnet schools providing special educational benefits and state subsidization of those schools that expand their minority enrollments. * * * These and like plans, if adopted voluntarily by States, also could help counter the effects of racial imbalances between school districts that are beyond the reach of judicial correction.

Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 488 (1979).

This court also approved magnets as a means of desegregating the Little Rock schools in *Clark v. Bd. of Educ. of Little Rock,* 705 F.2d 265, 269, 272 (8th Cir. 1983).

Courts of Appeals in several other circuits have also approved desegregation plans which include magnets. *Arthur v. Nyquist,* 712 F.2d 809, 811-813 (2d Cir. 1983); *Berry v. School District of Benton Harbor,* 698 F.2d 813, 819 (6th Cir.), *cert. denied,* 104 S. Ct. 236 (1983); *United States v. Texas Education Agency,* 679 F.2d 1104, 1110 (5th Cir. 1982); *Hart v. Community School Bd. of Educ.,* 512 F.2d 37, 54-55 (2d Cir. 1975)(citing successful magnet programs in Boston, Massachusetts; Providence, Rhode Island; and Coney Island, New York); *Stout v. Jefferson County Bd. of Educ.,* 483 F.2d 84, 85 (5th Cir. 1973). District courts have also approved plans that include magnets. *Tasby v. Wright,* 520 F. Supp. 683, 741 (N.D. Tex. 1981), *aff'd in part, rev'd in part, on other grounds,* 713 F.2d 90 (5th Cir. 1983); *Smiley v. Blevins,* 514 F. Supp. 1248, 1260 (S.D. Tex. 1981). A survey of the literature reveals that magnets are being used in at least eighteen cities. Rossell, *Magnet Schools as a Desegretation Tool,* 14 Urban Education 303, 320 (1979).

Despite the widespread approval of magnet schools by the federal courts, critics maintain that magnet schools cannot correct the deep-seated evils of school desegregation. *See, e.g., Morgan v. Kerrigan,* 530 F.2d 401, 410 & n.10 (1st Cir.), *cert. denied,* 426 U.S. 935 (1976); *Bradley v. Milliken* 484 F.2d 215, 243 (6th Cir.), *rev'd on other grounds,* 418 U.S. 717 (1974); *Kelley v. Guinn,* 456 F.2d 100, 108-109 (9th Cir. 1972), *cert. denied,* 413 U.S. 919 (1973). Yet the criticisms in these cases generally apply to desegregation plans in which magnets are the principal tool in a "freedom of choice" plan. They function differently in the settlement agreement approved here by the district court. Magnet schools are a single element of the panoply of remedies approved by this Court and the district court. Like the magnet schools in *Stout v. Jefferson County Bd. of Educ., supra,* 483 F.2d at 86, they are "part of a complex and many-faceted" plan. Magnets perform the salutary function of allowing "non-white as well as the white students so enrolled a chance to widen their horizons through the interplay of ideas and the absorption of diverse sub-cultural attitudes." *Hart v. Community School Bd. of Educ., supra,* 512 F.2d at 54.

Magnet schools under this plan will be distinguished by the features that have made them successful in other cities: individualized teaching, a low pupil-teacher ratio, specialized programs tailored to students' interests, enriched resources and active recruitment. *See* Rosenbaum and Presser, *Voluntary Racial Integration in a Magnet School,* 86 U. Chi. School Rev. 156, 156 (1978); Levine and Eubanks, *Attracting Nonminority Students to Magnet Schools in Minority Neighborhoods,* 19 Integrateducation 52, 57 (1981). Because they are supplemented by the extensive program of interdistrict transfers and compensatory education, these magnets will not resegregate, nor will they create a dualistic system with elitist schools.

We do not believe that the district court erred in ordering the State to pay the full capital and operating cost of magnet schools. As we noted earlier, the State's status as a violator of

the Constitution compels the district court to remedy the deprivations the State has caused. In *Liddell V, supra,* 677 F.2d at 642, we held that the State could be ordered to undertake as a part of its remedial responsibility the development of magnets. Now we reaffirm that conclusion.

While we approve magnet schools and affirm the district court's decision concerning their funding, we see merit in the State's argument that careful study and planning must precede replication or expansion of magnets. New magnet schools must be approved by the Magnet Review Committee and the district court. The planning process should focus on those schools and programs that present a reasonable probability of attracting suburban white students; only those schools which demonstrate such a probability should be approved. The new schools should be phased in over a period of four years as provided for by the settlement agreement. The total number of students enrolled in city magnet schools shall not exceed 14,000.

We impose an additional limitation on the development of suburban magnets. Although a panel of this Court approved the use of suburban magnet schools in *Liddell III, supra,* 667 F.2d at 658-659; and *Liddell V, supra,* 677 F.2d at 641-642, the Court en banc does not believe that the record sufficiently supports this development. The county districts may proceed on their own, of course, without state funding. Any black city students who transfer into county-funded magnet schools would count toward achieving the district's plan goal and would contribute to the district's final judgment. State fiscal incentives would include payments to districts sending transferees to county-funded magnets, but the State will not be required to pay the capital or operating costs of county magnet schools as such.

B. PART-TIME INTEGRATIVE PROGRAMS.

Part-time integrative programs are primarily intended to provide integrative learning experiences for students attending all-black schools. *Adams v. United States, supra,* 620 F.2d at 1296; *Liddell IV, supra,* 693 F.2d at 727; *Liddell V, supra,* 677 F.2d at 642. These programs have been, and should continue to be, an important element of the overall plan to integrate the city schools. In determining the need for continuing the existing programs, or developing new ones, the City Board and the Budget Review Committee must keep the above standard in mind. They must also recognize that the number of black students in nonintegrated schools will decline dramatically over the next four years. We thus approve the district court's decision insofar as it permits the continuance of part-time integrative programs and requires the State to pay full cost of the approved programs.

We do not, however, specifically approve the new or expanded programs or the dollar amounts for these programs listed in the proposed budget (items A.4.10, A.4.11, A.5.01, A.5.02, A.5.04, A.5.05, A.6.01, A.6.03, and A.6.04). We rather require the City Board to resubmit to the Budget Review Committee, discussed *infra* Section VI, a list of the new or expanded programs that they would propose to implement. The total cost of these programs should not exceed $1 million. Further, these programs must not duplicate any programs approved in the quality education section of this opinion. Any dispute that emerges between the City Board and the State concerning these programs should be submitted for resolution by the Budget Review Committee and the district court in light of this discussion.

IV. QUALITY EDUCATION IMPROVEMENTS.

The settlement plan approved by the district court includes compensatory and remedial programs to improve the quality of education throughout the St. Louis public schools and additional programs for the same purpose in the nonintegrated schools. The district-wide improvements include a reduction in class size; restoration of art, music, physical education, and extracurricular programs; creation of pre-school centers and all-day kindergarten programs; additional staff to address the needs of handicapped students; additional nursing and counseling staff; and expansion of library and other media resources and services. Administrative improvements include curriculum and staff development, evaluation and performance assessment, and enhanced long-range planning.

The additional improvements for the nonintegrated schools include a further class-size reduction in grades K through 8, to twenty pupils per teacher; additional remedial instruction time through after-school, Saturday, and summer school programs; parental involvement programs; and alternative education options for black students unable to attend magnet schools. Other programs address motivational needs of students in the all-black schools by stimulating opportunities for student success and recognition, by introducing role models for academic achievement, and by establishing student concerns committees to address the morale, attendance, and behavior issues which emerge during the implementation of the plan.

A. LEGAL PRECEDENT FOR INCLUDING COMPENSATORY AND REMEDIAL PROGRAMS IN DESEGREGATION REMEDIES.

This Court suggested the necessity for remedial and compensatory programs in *Adams v. United States, supra,* 620 F.2d at 1296, and reiterated that need in *Liddell V, supra,* 677 F.2d at 641-642. We thus approve them in principle as law of the case. *See supra* p. 28. Moreover, such programs have solid support in the case law as proper components of a desegregation remedy so long as they relate to the constitutional violation, are remedial in nature, and account for state and local autonomy. *Milliken II, supra,* 433 U.S. at 280-281.

In *Brown I,* the Supreme Court recognized that segregation harms black children by generating "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown I, supra,* 347 U.S. at 494. In light of this harm, federal courts have often required the inclusion of remedial programs in desegregation plans to overcome the inequalities inherent in dual school systems. *Milliken II, supra,* 433 U.S. at 283. *See, e.g., Arthur v. Nyquist, supra,* 712 F.2d at 811; *Oliver v. Kalamazoo Bd. of Educ.,* 640 F.2d 782, 789-790 (6th Cir. 1980); *Evans v. Buchanan,* 582 F.2d 750, 767-769 (3d Cir. 1978) (en banc), *cert. denied,* 446 U.S. 923 (1980); *United States v. Texas,* 447 F.2d 441, 448 (1971); *United States v. Jefferson County Bd. of Educ.,* 380 F.2d 385, 394-395 (5th Cir.), *cert. denied,* 389 U.S. 840 (1967); *Berry v. School Dist. of Benton Harbor,* 515 F. Supp. 344, 369-373 (W.D. Mich. 1981), *aff'd and remanded,* 698 F.2d 813 (6th Cir. 1983); *United States v. Bd. of School Comm'rs of Indianapolis,* 506 F. Supp. 657, 671-673 (S.D. Ind. 1979), *vacated in part on other grounds,* 637 F.2d 1101 (7th Cir.), *cert. denied,* 449 U.S. 838 (1980).

Such programs "assist students who previously attended all-Negro schools when those students transfer to formerly all-white schools. . . . The remedial programs . . . are an integral

part of a program for compensatory education to be provided Negro students who have long been disadvantaged by the inequities and discrimination inherent in the dual school system." *Milliken II, supra,* 433 U.S. at 284 (emphasis in original), quoting *Plaquemines Parish School Bd. v. United States,* 415 F.2d 817, 831 (5th Cir. 1969). Crucial to the Supreme Court's analysis in *Milliken II* is the concept that segregation not only inflicts harm on individual black students, but also builds "inadequacies [into the] * * * educational *system.*" *Milliken II, supra,* 433 U.S. at 284 (emphasis added). Thus, to remedy the effects of a dual system which operated for decades with the sanction of law, remedial efforts must also concentrate on *Systemic* educational improvements.

A secondary remedial objective of the quality education improvements is to enhance the appeal of the city school system, thereby promoting the chances of a stable and successful voluntary desegregation plan. The exodus of white parents and students out of fear of integration, or "white flight," is no excuse for school officials to avoid desegregating. *United States v. Scotland Neck City Bd. of Educ.,* 407 U.S. 484, 491 (1972); *Monroe v. Bd. of Comm'rs,* 391 U.S. 450, 459 (1968). Yet, "there is a valid distinction between using the defense of white flight as a smokescreen to avoid integration," and addressing "the probability of white flight in attempting to formulate a *voluntary* plan which would improve the racial balance in the schools without at the same time losing the support and acceptance of the public." *Higgins v. Bd. of Educ.,* 508 F.2d 779, 794 (6th Cir. 1974) (emphasis in original); *accord Parent Ass'n of Andrew Jackson High School v. Ambach,* 598 F.2d 705, 719 (2d Cir. 1979). A child's enrollment in a particular school is the result of two decisions: the government's student assignment, and the parents' decision to stay, move, or send their children to private school. Thus, as Professor James Coleman insists, "government policies must, to be effective, anticipate parental decisions and obtain the parents' active cooperation." Coleman, *New Incentives for Desegregation,* 7 Human Rights 10,

13 (1978). Improving the quality of integrated schools consequently promotes parental acceptance of desegregation, and promotes the remedy's success. Gewirtz, *Remedies and Resistance,* 92 Yale L.J. 585, 652-653 (1983). *See also* Rossell & Hawley, *Policy Alternatives for Minimizing White Flight,* 4 Educational Evaluation and Policy Analysis 205 (1982).

The quality improvements for the all-black schools serve a further remedial objective. A strong presumption exists against the constitutional propriety of one-race schools, *Swann v. Charlotte Mecklenburg Bd. of Educ., supra,* 402 U.S. at 26, and any desegregation plan leaving one-race schools must be carefully scrutinized. *Id.; Lee v. Macon County Bd. of Educ.,* 616 F.2d 805, 809 (5th Cir. 1980). To overcome this presumption of unconstitutionality, a court must find that the existence of one-race schools is justified in light of the particular facts of the case and the feasibility of other desegregation techniques. *Armstrong v. Bd. of School Directors,* 616 F.2d 305, 321-322 (7th Cir. 1980); *Tasby v. Estes,* 572 F.2d 1010, 1014-1015 (5th Cir. 1978). When no other feasible desegregation techniques exist, then specific remedial programs for students in the remaining one-race schools may be included as a means of ensuring equal educational opportunity. *See, e.g., Tasby v. Wright, supra,* 713 F.2d at 95-97; *Clark v. Bd. of Educ. of Little Rock, supra,* 705 F.2d at 272.[15]

The district court held extensive hearings on the fairness of the quality education component, with lengthy testimony from local and State education officials, a number of expert witnesses, and representatives of the other parties. After reviewing the evidence and the recommendations of the court-

---

[15] The quality of an all-black school is also improved when students attend such schools voluntarily. *See* Coleman, *New Incentives for Desegregation,* 7 Human Rights 10, 14-15 (1978). The settlement plan recognizes this imperative in providing for voluntary interdistrict transfers.

appointed financial advisor, the court concluded that the programs fell within the proper remedial scope:

> The sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of a segregated school system. * * *
>
> In no way should any funding provisions presently authorized by the Court be construed to authorize expenditures unrelated to City Board's desegregation obligations under the constitution and the Settlement Plan as approved.

Liddell v. Bd. of Educ., supra, 567 F.Supp. at 1051-1052.

B. ANALYSIS OF THE COMPENSATORY AND REMEDIAL PROGRAMS APPROVED BY THE DISTRICT COURT.

The position of the State before this Court with respect to the quality education programs is somewhat ambiguous. In its opening brief, it argued that the city and county schools had not agreed to a quality education package and that therefore the district court had nothing to approve.[16] It further asserted that

> [t]he Quality Education [component] is not only essential from a contractual point of view but also from a constitutional standing. The 15,000 black children in north St. Louis who will not have the opportunity to transfer under the Plan are still victims of constitutional wrongdoing as found by the court. The Quality Education section of the

---

[16] Section IV of the settlement plan states:

> [T]he St. Louis County School districts do not have the necessary information about the city schools to form an opinion on the details of the Appendix and, therefore, they do not agree or disagree with all of the specifics in this basic design.

> Plan is virtually the only remedy available to those black children to redress their wrong. Without it they stand as victims without redress.

State's Opening Brief at 26-27.

It concluded by stating that the court did not have the authority to modify the agreement to include the quality education component.

In its reply brief, the State changed the focus of its argument and complained that the provisions requiring improvement in the quality of education in the integrated schools were only remotely related to desegregation. It continued to assert this position at oral argument.

The State is not a party to the settlement agreement. It thus lacks standing to question the validity of the agreement on its terms. *Warth v. Seldin,* 422 U.S. 490, 501 (1975); *Fisher v. Tucson School District No. 1,* 625 F.2d 834, 837 (9th Cir. 1980). Even assuming that the State has standing to raise such a question, the district ocurt found that the parties had a meeting of the minds with respect to the essential terms of the agreement. This finding is not clearly erroneous.

The State clearly has standing, however, to challenge the district court's funding order and did so before that court. It renews that challenge here. It argues, in substance, that the court approved funding for general educational improvements in the integrated schools which were unrelated to

desegregation.[17] Its argument here is twofold. First, the State contends that these programs may only be approved if the Court can find that they would have been a part of the city school system *but for* the past unconstitutional segregation. This position misreads the case law and ignores the reality of the harm imposed by segregated schools. The relevant inquiry is not whether, in absence of a *de jure* dual system, St. Louis schools would have had compensatory and remedial programs. None of the numerous cases cited above approving such programs rested on such a conclusion. The point is that compensatory and remedial education programs are necessary to remedy the effects of discrimination on the victims of segregation and the school system itself.

The second aspect of the State's argument is that there are no findings made by the district court, nor sufficient support in the record, to suggest that the quality education improvements are

---

[17] The State cites *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 35 (1973), as support for the position that St. Louis students have no constitutional right to any particular level of education, but fails to note a critical distinction between *Rodriguez* and this case. *Rodriguez* held that property wealth is not a suspect class under the equal protection clause, and thus disparate educational expenditure levels between school districts were not a constitutional violation. Hence, the *Rodriguez* plaintiffs had no constitutional right to a particular level of education. *Id.*

Our case unquestionably involves a suspect class (race), and an established constitutional violation (a *de jure* dual school system). As noted above, courts have repeatedly endorsed compensatory and remedial efforts to overcome educational inadequacies imposed by segregated schools, *Rodriguez* notwithstanding.

only *remedial* in nature.[18] The Second Circuit recently observed that the line between remedial purpose and general educational improvements unrelated to desegregation is inevitably blurred:

> [A] court is entitled to require money for programs that materially aid the success of the overall desegregation effort. A program of that sort is not disqualified for needed funding simply because its inclusion improves the overall quality of the school system. At the same time a court must be alert not to permit a school board to use a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation. Striking the balance necessarily requires considerable deference by a district court to the good faith representations of the school authorities * * * and by a reviewing court to the knowledgeable assessment of a district judge intimately familiar with local conditions.

Arthur v. Nyquist, supra, 712 F.2d at 813 (citations omitted).

We think that the district court's order is fully supported as it relates to the quality improvements in the nonintegrated schools. Neither the State, the United States, nor the City specifically objects to these improvements. Moreover, they are consistent with the testimony of every expert witness that testified. The reduction in class-size was viewed by the witnesses for the black plaintiffs as critical to raising the achievement levels of black students. The programs designed to intensify remedial instruction, encourage parental involvement, and promote a positive learning climate reflect the objectives that the

---

[18] To clarify, relating the remedy to the violation pursuant to *Milliken II* does not require a finding that *each* educational program at issue has in the past been "infected with the discriminatory bias of a segregated school system." *Evans v. Buchanan, supra,* 582 F.2d at 769, quoting *Milliken II, supra,* 433 U.S. at 275. It is sufficient to determine that the remedial program is directed to cure the general condition offending the Constitution.

Supreme Court approved in *Milliken II*. *See Bradley v. Milliken*, 402 F. Supp. 1096, 1118-1119 (E.D. Mich. 1975), *aff'd and remanded*, 540 F.2d 229 (6th Cir. 1976), *aff'd*, 433 U.S. 267 (1977). The schools of emphasis assist in providing equal educational opportunity by providing alternative education options for black students unable to attend magnet schools. The motivational programs are designed to bring about productive attitudes towards learning, and are essential in the opinion of expert witnesses called by the black plaintiffs. *See* Haywood, *Compensatory Education*, 59 Peabody J. of Educ. 272, 274 (1982). Crain & Mahard, *How Desegregation Orders May Improve Minority Academic Achievement*, 16 Harv. C.R.-C.L. L. Rev. 693, 702 (1982).

Notwithstanding our affirmance in principle of the district court's order insofar as it relates to the all-black schools, we believe that the following modifications to the order should be made so that careful planning and effective implementation may proceed without disruption of the current school year:

> (1) To the extent that any of the programs have been heretofore instituted, they may be continued. The remaining programs may be instituted at the beginning of the 1984-85 school year. The summer school program may be implemented for the summer of 1984.
>
> (2) The reduction in class size from present levels to the 20:1 pupil-teacher ratio should be made over a period of four years beginning in 1984-85. The phased reduction recognizes that as many as 12,500 additional black students may transfer to county schools in the next four years, and that as many as 3,000 more black students may transfer to magnet schools during the same period. By coordinating the class-size reduction with the transfers, student and teacher disruption can be lessened and the construction or rehabilitation of school buildings to house the smaller classes minimized.

(3) The amount budgeted for item B.1.01, Coordination of Instruction, should be reduced by one-half. Evelyn F. Luckey, an expert witness for the Liddell plaintiffs, testified that the program could be successfully accomplished within the limits of the reduced amount.

(4) The schools of emphasis should be phased in over a two-year period beginning in 1984-85.

(5) Detailed planning for the programs in the all-black schools should continue so that the programs can be implemented on schedule.

We cannot fully agree with the district court's conclusion that all of the quality education improvements in all schools are closely related to the integration process. While we concur with the Second Circuit's view that a district court should show considerable deference to the good faith representations of the school authorities, and that we should show similar deference to the judgment of the district court, a review of the record leaves us with the firm conviction that the district court erred in approving many of the programs in the quality education budget.

We begin our analysis by indicating our areas of agreement with the district court. Initially, we believe there is strong support in the record for approving those programs necessary to permit the city schools to regain, and then retain, their Class AAA status. This standard is developed by the Department of Education of the State of Missouri. *See* Handbook for Classification and Accreditation of Public School Districts in Missouri (1980). Seventy-four percent of the children attending Missouri public schools attend schools that have this rating. Missouri School Directory (1982-83). The City Board was denied this rating because its classes were too large, it had too many uncertified teachers, it lacked counselors in the elementary grades, it did not provide art, music, and physical educa-

tion in the elementary grades, and its library and media services were inadequate.[19]

Second, we find adequate support in the record for preschool centers (budget item A.4.01, $811,000), and for planning and program development (a part of budget item A.1.01, $585,000). Both of these programs are recommended by the State Department of Education, and both have been shown to be closely related to the desegregation process.

Third, we find adequate support in the record for all-day kindergartens (budget item A.4.02, $6,129,000); parental involvement (budget item A.8.05); desegregation planning (budget item A.8.13, $41,000); long-range planning (budget item A.8.15, $431,000); and public affairs (budget item A.8.06, $184,000). The all-day kindergarten program serves several important compensatory and remedial objectives. Much of the testimony at the fairness hearings emphasized the importance of focusing desegregation efforts on the earlier grades, as younger children have developed fewer racial prejudices and differences in performance are narrower. *See* Hawley, *Effective Educational Strategies for Desegregated Schools,* 59 Peabody J. of Educ. 209, 214 (1982). The additional instruction time will also assist in building prerequisite skills for city pupils. The testimony also emphasized that many of the children came from single-parent families that did not provide them with the skills which would permit them to compete with other children at the first-grade level. *See Milliken II, supra,* 433 U.S. at 284. The all-day kindergarten program is an expensive one which must be implemented carefully if waste is to be avoided, and the full benefits of the program realized. We therefore direct that the program be phased in over a period of at least two years.

---

[19] Since this Court's order of September 12, 1983, many of the changes necessary to gain a AAA rating have been implemented and the State has recently restored the AAA status to the city schools.

Parental involvement is similarly emphasized, both in the record and in the literature, as crucial to the success of the desegregation plan. *See, e.g.*, Hawley, *Effective Educational Strategies for Desegregated Schools, supra,* at 212, 225-226. Because many students will not be attending their neighborhood schools as a result of the student transfers, special parent-staff seminars and other programs will be critical in developing and maintaining parental involvement. The changes involved in implementing the plan, and the future demographic and student enrollment shifts, render long-range planning essential to the successful desegregation of the city schools. The public affairs program is essential to citizen awareness and acceptance of the plan.

In light of the foregoing discussion, we approve the district court's funding order insofar as it relates to programs necessary to the city schools to retain its AAA rating. While the record is not entirely clear as to precisely what programs the State required the City Board to institute to regain this rating, it appears that they are budget items A.2.01, library and media services; A.2.02, audio visual services; A.3.01, lower class size; and A.3.02, restoration of art, music, and physical education. It is the intention of the Court that these budget items be implemented only insofar as necessary for the city schools to retain their AAA status. Retaining this status does not include a further class-size reduction in the integrated schools. We also approve the following additional programs: preschool centers, planning and program development, all-day kindergarten, parental involvement, desegregation planning, long-range planning, and public affairs.

We cannot, however, find adequate support in the record for the remaining programs. All are desirable, but the City Board has not made the case that they are necessary to provide equal educational opportunities to the children of St. Louis, or are otherwise essential as remedial or compensatory programs.

C. CAPITAL IMPROVEMENTS IN THE INTEGRATED AND NONINTEGRATED SCHOOLS

The settlement agreement describes the age and condition of the city schools: Generally, they are in a condition of old age, rapid deterioration, and extreme deferred maintenance. Thirty-four of the nonintegrated black schools and twenty-one of the integrated schools are over fifty years old. Nearly one-fourth of the building area in the city schools is over seventy-five years old. Nearly one-half of the building area in the city schools is over sixty-five years old. More than two-thirds of the building area in the city schools is over fifty years old. At the fairness hearing, the district court heard uncontradicted evidence as to the condition of the city school facilities which paralleled that recited in the settlement agreement.

In the last twenty-four years, St. Louis voters have defeated thirteen proposed bond issues. The only bond issue to pass during this period was in 1962, and approval came only after resubmission to the voters. Significantiy, both of the last two proposed bond issues were approved by a simple majority; the constitutional requirement of two-thirds voter approval, however, blocked passage of these issues.

At the fairness hearing, the State argued that more careful planning was required before renovation or new construction programs could be initiated, particularly in light of expected declining enrollment in the city schools. It also argued that the schools were in a deplorable condition because the City School Board had failed to maintain them over the years. It questioned whether certain items were properly included in the capital improvement budget, contending that they were routine maintenance items that should be funded exclusively by the City Board.

The district court's order and memorandum did not discuss the facility improvement program at length. It simply stated that

(b) the City Board shall submit to its voters, on or before February 1, 1984, a proposed bond issue of an amount determined by the City Board as sufficient to meet those of its capital improvement needs as are deemed necessary to meet its constitutional obligation to desegregate the City's public schools; [and]

(c) should that bond issue fail to obtain the two-thirds majority vote required by State law, the Court will consider an appropriate order to obtain the funds deemed sufficient to meet the capital improvement needs of City Board in complying with its constitutional obligation to desegregate the City's public schools.

Liddell v. Bd. of Educ., supra, 567 F. Supp. at 1056.

Pursuant to that order, the City Board formulated a building program with a total cost of $127 million, with one-half of the total to be financed by the issuance of $63.5 million in City Board bonds.

The bond issue was presented to the voters on November 8, 1983, and fifty-five percent of the voters approved the issue. Eighty-four percent of the voters in the predominately black wards voted for the issue, but sixty-five percent of the voters in the predominately white wards voted against it. The bond issue was defeated because it failed to receive a two-thirds majority.

On appeal to this Court, the State does not question either the need to improve facilities, nor its obligation to help pay for these improvements. In its opening brief, it argues that if the bond issue fails, the whole plan will fail for lack of funding because it is unfair to expect the State to pay the full costs of the improvements. It also renews its argument that, because the county schools failed to agree to a detailed building program, the settlement agreement as a whole must fail. Finally, it asserts that, in any event, the district court is without authority to enter an order requiring a tax levy to fund the City Board's share of

the improvements. In its reply brief, the State simply states that the provision of the order requiring "extensive capital improvements" is "entirely out of proportion to the constitutional violations found by the District Court."

The district court did not err in holding that the State had an obligation to pay one-half of the costs of the capital improvement program necessary to restore the city facilities to a constitutionally acceptable level, and we find no merit in the State's suggestion that the district court's order cannot stand because the county districts failed to agree to the details of the facilities improvement program. *See supra* pp. 49-50.

There is merit to the State's argument that more careful and detailed planning should precede action by the district court and that this planning should identify the projects to be undertaken, establish the cost of each project and set a more specific schedule for the improvements. Planning and scheduling are particularly important in view of the expected decline in enrollment.

On remand, therefore, the City Board should promptly identify the projects to be undertaken, estimate the cost of each project, and set a reasonably detailed schedule for the completion of each project. The projects having the highest priority must be scheduled for completion at the earliest possible date. To that end, the City Board should consider the desirability of a referendum on a bond issue which can be initiated at a very early date and a subsequent bond issue for those projects to be built in later years. The State will pay one-half of the cost of preparing the detailed plans and schedules.

As soon as the City Board has prepared the new plans, estimates, and schedules, it shall submit them to the Budget Review Committee, discussed *infra* Section VI, and then to the district court. When the district court has approved them, a new bond issue shall be submitted to the voters. If it is defeated again, the district court shall determine how the improvements will be funded. *See infra* Section V.

V. FINANCING DESEGREGATION IN ST. LOUIS CITY SCHOOLS.

In November, 1982, Missouri voters approved a referendum (Proposition C) which directed local school officials to reduce their operating levies by an amount equal to fifty percent of the revenues local school districts would receive under a one-cent increase in the state sales tax. Mo. Rev. Stat. § 164.013 (Supp. 1983). In its July 5, 1983, order, the district court enjoined this rollback of local real estate taxes, *Liddell v. Bd. of Educ., supra,* 567 F. Supp. at 1056, and directed the Board of Education to use this money to fund the quality education programs necessary to restore the St. Louis schools to their AAA status. In our en banc order of September, 1983, we sustained the district court's injunction of the rollback on equitable grounds, for the injunction was already in place, and reversal at that time would have seriously disrupted St. Louis's system of school finance. *Liddell VI, supra,* 717 F.2d at 1182-1184. We sustain the injunction against the rollback for the balance of this school year for the same reason. The equitable nature of that decision obliges us now to examine the propriety and the merits of the district court's injunction of the rollback with respect to years beyond 1983-84. We also consider the district court's authority to order a further increase in property taxes to fund operating expenses or capital improvements.

We hold that the district court's broad equitable powers to remedy the evils of segregation include a narrowly defined power to order increases in local tax levies on real estate. Limitations on this power require that it be exercised only after exploration of every other fiscal alternative.

The district court's use of broad equitable powers concerning school desegregation costs has been approved by previous opinions of the Supreme Court. Thus, it has declared that, when predicated on a right and a violation, "the scope of a district court's equitable powers to remedy past wrongs is broad, for

breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ., supra,* 402 U.S. at 15. These powers subsume a broad range of ideas and tactics: equity assures that "all reasonable methods be available to formulate an effective remedy." *North Carolina State Bd. of Educ. v. Swann,* 402 U.S. 43, 56 (1971). These powers may also be applied broadly "to achieve the greatest possible degree of [relief] taking into account the practicalities of the situation." *Davis v. Bd. of School Comm'rs of Mobile County,* 402 U.S. 33, 37 (1971).

In *Griffin v. School Bd. of Prince Edward County,* 377 U.S. 218 (1964), the Supreme Court acknowledged that the district court may order an increase in taxes to fund schools where the State has defaulted on its obligation to provide an equal educational opportunity to all students. The Court did not limit the scope of its holding by ordering a return to the previous tax levy or procedures. It indicated only that the tax must be "necessary to prevent further racial discrimination" and that it must "raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system." *Id.* at 233.

In *United States v. Missouri,* 515 F.2d 1365 (8th Cir.), *cert. denied,* 423 U.S. 951 (1975), this Court also acknowledged the district court's remedial power to require a tax levy in excess of that authorized by the voters. When the district court ordered the consolidation of three St. Louis suburban school districts with disparate tax rates ($3.80, $4.97 and $5.38), it concluded that a uniform tax rate higher than any of the three ($6.03) would be necessary "to effectively operate the desegregated district," *id.* at 1371, and that "[t]his rate, inclusive of the amount necessary to service the total debt of the enlarged district, shall be deemed to have been approved by the voters for the purposes of Article 10, section 11(c), Missouri Constitution." *Id.* at 1372. In setting that rate, the district court also noted that "there was no reasonable possibility that such a tax levy would be approved by the required two-thirds vote in the aftermath of the desegregation order." *Id.* at 1371-1372.

On appeal, this Court sitting en banc unanimously approved a rate of $5.38, the highest rate of the three districts. Judge Stephenson, writing for the full Court, stated:

> It is anomalous to suggest that the district court has the power to disestablish a dual school system but does not have the power to fashion an appropriate remedy. In *North Carolina State Board of Education v. Swann,* 402 U.S. 43, 45 * * *, the court stated:
>
> > [I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.
>
> We have likewise held in ordering implementation of a school integration plan that "the remedial power of the federal courts under the Fourteenth Amendment is not limited by state law." *Haney v. County Board of Education of Sevier County, supra,* 429 F.2d at 368 * * *.
>
> We are satisfied that the district court had the authority to implement its desegregation order by directing that provision be made for the levying of taxes essential to the operation of the new school district. It is our view, however, that deference should be given to the plan submitted in good faith by the state and county officials and which was largely accepted by the court. It was the view of the state that with the receipt of anticipated funds through action of the legislature the present Ferguson rate would be adequate. Maximum consideration should be given the views of the state and local officials concerned so long as they appear compatible with the goals to be achieved. The maximum rate in the new district should be reduced to $5.38 per hundred.

Id. at 1372-1373 (citations and footnote omitted).

The City cites *Evans v. Buchanan,* 582 F.2d 750 (3d Cir. 1978) (en banc), for the proposition that the district court is without authority to order a tax increase to fund a court-imposed desegregation plan. The decision cannot be so construed. Indeed, the court en banc, relying on *Griffin,* made clear that the district court had that authority: had the State allocated "no funds, or substantially insufficient funds, to operate the remainder of the school system, such action by the State would clearly be unacceptable as interfering with the operations of the desegregation decree." *Id.* at 780. In addition, in *Evans,* the district court had acted before the "obvious inherent political safeguards * * * [were] permitted to run their course." *Id.* Our instructions on remand are entirely consistent with *Evans* because the district court must defer to the political funding process before it may consider ordering a tax increase. We read *Evans* for the proposition we stated at the outset of this discussion: a district court may require an increased tax levy, but only where necessary to remedy a violation of the Constitution, and only after exhausting all other alternatives.

The City and State also cite *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973), in arguing that the courts should defer to the legislative expertise of state and local governments. That case is also distinguishable. It involved an equal protection challenge of Texas's use of the property tax for funding education. The appellants claimed that this system of taxes *per se* was discriminatory because it raised disparate revenues in different school districts acording to disparities in the assessed valuation of property within the districts. The Supreme Court found no suspect class affected and no fundamental rights at stake. Instead, it relied on the "rational basis" test and deferred to legislative expertise in fiscal matters. On the other hand, in this case, the City Board and State have both been adjudged constitutional violators in matters involving a suspect classification. Moreover, in this case, no one

challenges the mechanics of the tax system, which was the central issue in the passage from *Rodriguez* that the State cited.[20]

Our conviction that the district court's equitable power includes the remedial power to order tax increases or the issuance of bonds finds support in the case law surrounding the contracts clause of the United States Constitution. U.S. Const. art. 1, § 10, cl. 1. The Supreme Court has recognized that a municipality's contractual obligations cannot be impaired solely because state law restricts its powers to tax in order to meet those obligations. When the City of New Orleans raised such an argument in an attempt to avoid its debts owed to the receiver of a metropolitan police board, the Court had no trouble holding that the courts could require "the city to pay over the taxes for which the judgment was rendered, or to levy and collect a tax therefor for the benefit of the relator as receiver." *Louisiana ex rel. Hubert v. Mayor and Council of New Orleans,* 215 U.S. 170, 181 (1909). *See also Energy Reserves Group, Inc. v. Kansas Power & Light Co.,* 103 S. Ct. 697, 705 n.14 (1983) ("When a

---

[20] The State relies on several older cases to argue that the district court may not order a tax levy to satisfy a judgment against a municipality. Each of these cases arose in a commercial context. In *United States v. County Court of Clark County,* 95 U.S. (5 Otto) 769 (1878), a bondholder sought a court-ordered tax levy to pay interest coupons for years preceding the year the bonds were issued. The Court declined to levy taxes because until the bonds were issued, the county had no obligation and no authority to levy the taxes. *Rees v. City of Watertown,* 86 U.S. (19 Wall.) 107 (1874), and *United States v. County Court of Macon County,* 99 U.S. 582 (1879), involved bondholders requesting court-ordered levies to pay for bond defaults. In both cases, the Court declined, holding the remedy barred by statutes in existence at the time the contracts of indebtedness were formed. Since the statutes became, by implication, a part of the contract, they precluded the use of the taxing remedy. Finally, in *Citizens' Savings and Loan Ass'n v. Topeka,* 87 U.S. (20 Wall.) 655 (1875), the Court delined to order a tax levy to pay for a default on bonds isued by a local corporation aided by the city. The Court reasoned that the tax would not have been lawful because it would not have been levied for a public purpose.

State itself enters into a contract, it cannot simply walk away from its financial obligations."); *United States Trust Co. v. New Jersey,* 431 U.S. 1, 24 (1977) ("[T]he taxing power may have to be exercised if debts are to be repaid. Notwithstanding these effects, the Court has regularly held that the States are bound by their debt contracts." [Footnote omitted.]).

Similarly, courts have recognized that municipalities may not avoid their liability in tort by pleading constitutional or statutory debt limitations. *Wichita Finance and Thrift Co. v. Lawton,* 131 F. Supp. 788, 790 (W.D. Okla. 1955); *State ex rel. Martin v. Harris,* 75 N.M. 335, 115 P.2d 80, 83 (1941); *Raynor v. King County,* 97 P.2d 696, 708 (Wash. 1940); *City of Catlettsburg v. Davis' Administration,* 262 Ky. 726, 91 S.W.2d 56, 59-60 (1936); *Town of Flagstaff v. Gomez,* 242 P. 1003, 1004 (Ariz. 1926); *City of Long Beach v. Lisenby,* 179 P. 198, 200 (Cal. 1919) (taxes in such cases can be raised beyond their legal limits by the courts "without a vote of the people of said city.").

We turn to an evaluation of the district court's July 5, 1983, order in light of the foregoing discussion. We initially note that the district court declined to order an increase in real estate levies for operating purposes until the need for such revenues had been clearly demonstrated. It also declined to order a tax increase to fund capital improvements until such time as a bond issue of an amount determined by the City Board as sufficient to meet the most pressing capital improvement needs of the Board's constitutional obligation to desegregate had been submitted to the voters. It acted properly in both respects.

It went on, however, to authorize and direct the City Board to not reduce its operating levy as required by Mo. Rev. Stat. § 164.013 (Proposition C), and to direct the State to refrain from withholding from the City Board funds that it would otherwise withhold pursuant to the same statute. It required that the revenue realized be utilized to fund the desegregation plan. It

stated that any revenue thus retained but not necessary to fund the City Board's constitutional obligation should be applied to reduce its operating levy on July 1, 1984.

In our view, this order was deficient in that it was not accompanied by a factual finding by the district court that all other fiscal alternatives were unavailable or insufficient. We are unwilling to read such a finding into the record even though the record reveals that the City Board has little or no budget surplus, federal aid for desegregation has been cut, real estate values in the district have risen only slightly in recent years and referenda to secure additional funds have been largely unsuccessful.[21] On remand, the district court must allow the rollback under Proposition C to take effect for the 1984-85 school year unless it finds that no other alternatives are available or sufficient to finance its desegregation order. In addition, it shall not require any additional levy unless it makes similar findings.

Specifically, the district court should, first, promptly determine the amount of money that will be required in 1984-85 to fund the desegregation order and it should subsequently determine the funds necessary for each of the succeeding years. Second, the district court should determine whether the City Board is able, with its own resources, to fund its share of the costs. In making this determination, the district court shall consider the reduced budgetary pressures that will result from the transfer of nearly 6,000 students from city to county schools in 1984-85, and from the transfer of an additional 9,000 students in the following three years. In addition, the district court shall con-

---

[21] Since 1970, five referenda have been submitted to the voters to increase the authorized operating levy. While one requested increase passed in 1976, the remainder failed even though three of these remaining four received a majority vote. We note, however, that an increase of $.25 per $100 of assessed valuation in the current operating levy could be approved by a simple majority of the voters. Mo. Const. art. 10, § 11(c).

sider the effects of students transferring to magnet schools and of the City Board's receipt of transfer payments under the settlement agreement for sending students to county schools. Third, if the district court determines that the City Board lacks resources sufficient to fund its share of the desegregation order, it shall consider alternative sources of revenue. These alternatives include, but are not limited to: submission of a referendum to the voters for an increased operating levy; or authorization of the City Board by the State legislature to impose non-real estate taxes within the city. Fourth, if the voters refuse to approve a higher tax levy, or if the legislature fails to authorize the City Board to raise taxes from non-property tax sources, or if the City Board and the State, as joint tortfeasors, are unable to agree on an alternate method of raising the City Board's share of the cost, the district court shall conduct an evidentiary hearing and thereafter enter a judgment sufficient to cure the constitutional violations which we have found in a manner consistent with this and prior opinions.

VI. BUDGET REVIEW COMMITTEE.

The settlement agreement, the district court's funding order and opinion, and this Court's opinion have established detailed guidelines for desegregating the city schools over the next four years. The agreement provides for a number of committees to assist in desegregation. They include the Desegregation Monitoring and Advisory Committee, the Magnet Review Committee, and the Voluntary Interdistrict Coordinating Council. The function of the latter committee is to coordinate and administer the student transfers, the voluntary teacher exchanges and the part-time educational programs. A Recruitment and Counseling Center has also been established. Each of these committees and the Center fulfill important functions in the desegregation process and may be continued and funded in accordance with the settlement agreement at the discretion of the district court.

The district court also outlined the budgeting procedures that would be followed:

> 11. For the effective and timely implementation of the Settlement Plan, as approved, the following budgeting procedure shall apply with regard to all actual and reasonable costs, except transportation costs and costs incurred for the student transfer payments made to sending and receiving districts, incurred pursuant to the approved Plan:
>
> (a) each participating school district shall deliver to State defendants a proposed budget for all desegregation programs and activities intended for implementation pursuant to the Settlement Plan[.] * * * For * * * fiscal [year 1984-85 and subsequent years], the budgets shall be delivered to the State on or before March 1 of the preceding fiscal year;
>
> (b) the budget for the VICC and for the Recruitment and Counseling Center (RCC) shall be filed with the Court and submitted to the State on or before * * * March 1 of the preceding fiscal year;
>
> (c) on or before [March 15 of each preceding fiscal year], representatives of the State and of each participating district shall identify in writing their areas of agreement and disagreement relating to budgetary matters. * * * After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration.
>
> [T]he State shall submit in writing any objections to the budgets for the VICC and for the RCC * * * on or before March 15 of the preceding fiscal year. After completion of these efforts, the representatives may submit to the Court a joint statement of budgetary matters then remaining in dispute for the Court's consideration;

(d) the Court's financial adviser may participate in the budget meetings between the State and the various representatives, and may present comments on the budgets to the Court either in writing directly, or at any subsequent hearing that may be required; and

(e) for the 1983-1984 fiscal year, any budget disagreements that remain, after the required meetings and reports, will be referred to United States Magistrate David D. Noce for a hearing on or before August 5, 1983. For subsequent fiscal years, the Court will consider any remaining disputed budget issues in a manner the Court deems appropriate.

Liddell v. Bd. of Educ., supra, 567 F. Supp. at 1057.

We believe that the budgeting process is deficient in three respects: (1) it fails to require long-range budgeting; (2) it does not give the State, the principal funding source for the plan, an adequate role in the budgetary process; and (3) it fails to provide an effective method of resolving budgetary disputes before they reach the district court. As a result, that court must spend an inordinate amount of its time resolving disputes that should be resolved by the parties.

We direct that a small budget committee be named, consisting of two representatives of the State of Missouri, one representative from the city schools to be selected by the City Board, one representative to be jointly selected by the Liddell and Caldwell plaintiffs, and a court-appointed expert in school financing at the earliest possible date. The court-appointed expert shall serve as chairman of the committee. Its responsibilities will be determined by the district court but will include:

(1) Preparing, with the cooperation from the participating school districts, a budget for the 1984-85 school year through the 1987-88 school year for each element of the desegregation plan (including capital requirements and updating that budget

on an annual basis). These budgets should reflect the best current estimates that can be made of the probable cost of the plan for each of the next four years. The budgets will permit the State and the City Board to anticipate the funds that will be required to fund the plan. They will also force the participants to consider at an early date the dramatic changes that will occur in the city schools' student population in the integrated and nonintegrated schools and magnet schools, and will assist in the effort to control costs.

(2) Receiving the annual budgets prepared by the participating school districts on the same date that the budgets are to be received by the State. The State and each participating district will identify, in writing, their areas of agreement and disagreement relating to budgetary matters at a time to be determined by the court on the recommendation of the Budget Committee. The Budget Committee will make every effort to resolve differences as to the budget in accordance with the principles set forth in the settlement agreement, the district court's order and this opinion. Any unresolved disputes will be promptly presented to the district court with the recommendations of the court-appointed expert. The district court will resolve any disputes. This resolution is not an appropriate task for a United States Magistrate. The number of disputes should be dramatically reduced if the parties participate in good faith in the procedure outlined. The district court will enter an appropriate order with respect to the funding of the Budget committee.

VII. OTHER ISSUES.

Several issues raised by various parties remain for resolution by this Court. We hold the following:

A. ST. LOUIS TEACHERS.

This district court did not err in denying the St. Louis Teachers Union Local 420 the right to intervene in these proceedings. The Union has, however, timely raised its interest in seeking preferential hiring rights for black city teachers in county school districts, and this interest is sufficient to allow its intervention in future proceedings. *See* Fed. R. Civ. P. 24.

We note further that the settlement plan contains annual hiring goals for black teachers and administrators in the county schools. Implementation of these goals requires only nominal monetary support from the State, and provides significant benefits to the county districts and the black plaintiffs. We approve this section of the settlement plan.

B. NORTH ST. LOUIS PARENTS

The North St. Louis Parents and Citizens for Quality Education argue that the district court erred in approving the settlement plan because it sacrifices the interests of the black students who will remain in the all-black schools for the interests of the black students who will transfer to county schools. They base their argument on the fact that the amount of state funding for students who opt to bus to county schools greatly exceeds the amount of state funding to compensate students who remain in neighborhood all-black schools.

As we have discussed, *supra* p. 47, equal educational opportunity for students remaining in one-race schools is a crucial concern in examining a desegregation remedy. The settlement plan contains significant quality improvements for the all-black schools, and we have approved these programs with minimal limitations. We find no evidence in the record to support the claim that the interests of students attending the all-black schools are being slighted. As we see the record, black students will now have several alternatives: attend their neighborhood school, attend an integrated school in the city or county, or attend a magnet school.

Both the North St. Louis Parents and the City argue that the district court failed to provide adequate notice to potential class members. We hold that the district court did not err in this regard. Nor did it deprive the North St. Louis Parents as class members of due process by failing to respond in detail to their objections to the settlement plan. The district court's opinion reveals that it engaged in a reasoned examination of objections raised by class members concerning whether the plan is fair, reasonable and adequate. *Liddell v. Bd. of Educ., supra,* 567 F. Supp. at 1042-1047.

C. THE CITY'S PETITION FOR A WRIT OF PROHIBITION, AND ITS OTHER REMAINING OBJECTIONS.

In our recent en banc order, we reserved a ruling on the City's petition for a writ of prohibition until we considered the merits on appeal. *Liddell VI, supra,* 717 F.2d at 1184. For the reasons discussed above, *supra* pp. 59-66, concerning the City Board's property tax rate, we deny the writ.

For reasons discussed throughout this opinion, we hold that the district court did not fail to evaluate the settlement ageement properly; we thus dismiss the City's objections on this point. The City argues further that the district court erred in denying or limiting cross-examination of experts at the fairness hearing. We find no abuse of discretion by the district court in this regard. *See* Fed. R. Evid. 611.

D. FINAL JUDGMENT FOR THE COUNTY SCHOOL DISTRICTS.

We specifically approve the settlement agreement insofar as it relieves the participating county school districts of liability if they meet the goals set forth in the settlement plan within five years.

We have considered all other arguments and find they have no merit.

CONCLUSION

The judgment of the district court is affirmed in part and reversed in part, and this matter is remanded to the district court for action consistent with this opinion. The City Board, the City of St. Louis, the North St. Louis Parents and Citizens for Quality Education, and the St. Louis Teachers Union Local 420 will each bear their own costs on appeal. All other costs of appeal shall be taxed to the State of Missouri. The mandate of this Court will issue forthwith.

JOHN R. GIBSON, Circuit Judge, concurring in part and dissenting in part.

The Court today approves a settlement which in great part requires funding by the State of Missouri. The State of Missouri was not a party to this settlement. In the litigation before us the State has been found to be a constitutional violator insofar as there is a intradistrict constitutional violation within the City of St. Louis. The Court today improperly requires the State to fund a remedy far broader than this constitutional violation, an admittedly interdistrict remedy involving not only the schools in the City of St. Louis but the schools in St. Louis County. Accordingly, I must dissent in part.

It is necessary that we first determine what this Court has found to be the constitutional violations by the State of Missouri and then consider the nature of the remedy that may be employed in such circumstances.

I.

Even though this case has been before this Court on four earlier occasions, the nature of the constitutional violation by the State of Missouri has been outlined only most generally. In our most recent opinion, *Liddell v. Board of Education of City of St. Louis,* 677 F.2d 626 (8th Cir. 1982) (*Liddell V*), *cert. denied,* ____U.S.____, 103 S. Ct. 172 (1983), the panel, speaking through Judge Heaney stated:

> We held in *Adams* that the state had substantially contributed to the segregation of the public schools of the City of St. Louis. No appeal was taken from that decision by the state. That decision has been settled and will not be reopened.

677 F.2d at 629. The Court there referred to the 1981 decision, *Liddell v. Board of Education of City of St. Louis,* 667 F.2d 643 (8th Cir.) (*Liddell III), cert. denied,* 451 U.S. 902 (1981), where the panel, again speaking through Judge Heaney stated:

> The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its actions did not violate the Constitution. . . .
>
> This contention is wholly without merit. In our March 3 opinion, we specifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams v. United States, supra,* 620 F.2d at 1295 n.28. These statements amount to a clear reversal of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so.

677 F.2d at 654.

These opinions referred to the earlier en banc decision in *Adams v. United States,* 620 F.2d 1277 (8th Cir.), *cert. denied,* 449 U.S. 826 (1980). In *Adams,* the Court held that the district court had erroneously concluded that the Board of Education had discharged its duty to desegregate the St. Louis school system by adopting a neighborhood school plan and refraining from discriminatory actions thereafter and that factors over which the Board of Education had no control were responsible

for today's segregation in the St. Louis school system. *Adams,* 620 F.2d at 1291. The Court observed that most schools in north St. Louis were black in 1954 and remained black and that most schools in south St. Louis were white in 1954 and remained white. The Board had not dealt with the problem in 1954 to 1956 by developing a plan that would integrate the schools in north and south St. Louis. The Court concluded: "We have no alternative but to require a system-wide remedy for what is clearly a system-wide violation." *Id. Liddell III & V* refer to the discussion on pages 1294 and 1295 in *Adams,* and footnotes 27 and 28. Testimony of Dr. Orfield that an interdistrict remedy funded by the State of Missouri would have the best chance of permanently integrating the schools in metropolitan St. Louis was discussed, together with the pre-*Brown* practices of both the St. Louis suburban school districts and those of the City of St. Louis to maintain segregated schools. The costs of the desegregation plan were to be apportioned among the defendants as determined by the district court.

It is evident that this discussion in *Adams* is dealing with the St. Louis City school system. The Board was directed to develop a system-wide plan for integrating the elementary and secondary schools. The court remanded "to the district court with instructions to take those steps necessary to bring about an integrated school system" in accordance with certain guidelines and timetables set out. *Adams,* 620 F.2d at 1295. Cooperative transfers with suburban districts in St. Louis County were discussed.

This discussion in *Adams* does not address the question of interdistrict violation or interdistrict remedy.

This conclusion is fortified by the suggestion in *Liddell V* that "the interdistrict liability proceedings previously severed from the remainder of the case be postponded until after . . . an order in the pending 12(c) proceeding" and that "the interdistrict liability aspect should then proceed promptly thereafter." 677

F.2d at 642. The district court and this Court have not to this time made findings or conclusions of interdistrict violation.

Liddell V made the following reference with respect to the State defendants:

> [T]hey are primary constitutional wrongdoers and, therefore, can be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district.

677 F.2d at 630.

The decision discussed the voluntary participation of suburban schools and the preparation and submission of feasibility plans for interdistrict desegregation involving city and suburban schools. 677 F.2d at 641.

Following *Liddell V,* the district court commenced its preparation for trial of the interdistrict issues, but before the trial could proceed and findings on the interdistrict violation and remedy issues could be made, the settlement now before the Court was achieved, with the State not participating. From this history the only conclusion that we can reach is that the constitutional violation found on the part of the State and the City of St. Louis is failure to take necessary actions to desegregate the schools in the City of St. Louis and particularly to desegregate the schools on a system-wide basis, including the predominantly white schools in south St. Louis and the predominantly black schools in north St. Louis.

II.

The scope of remedy available once a constitutional violation has been found has been discussed by the United States Supreme Court most recently in *Pasadena City Board of Education v. Spangler,* 427 U.S. 424, 49 L.Ed.2d 599 (1976), in which the Court speaking through Justice Rehnquist stated:

> [I]n Swann the Court cautioned that "it must be recognized that there are limits" beyond which a court may not go in seeking to dismantle a dual school system. *Id.*, at 28, 28 L.Ed.2d 554, 91 S Ct 1267. These limits are in part tied to the necessity of establishing that school authorities have in some manner caused unconstitutional segregation, for "[a]bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis." *Ibid.*

427 U.S. at 434. The district court order in *Pasadena* was set aside, the Court finding that there was no showing that the post-1971 changes in the racial mix of the Pasadena schools was caused by segregative actions chargeable to the defendants, pointing to changes in the demographics of Pasadena's residential patterns. 427 U.S. 435-36.

The principles limiting available remedies were outlined in *Hills v. Gautreaux,* 425 U.S. 284, 47 L.Ed.2d 792 (1976). The Court there reviewed the earlier decision in *Milliken v. Bradley,* 418 U.S. 717 (1974) (*Milliken I*). It pointed to the fundamental limitation on the remedial powers of the federal courts to restructure the operation of local and state government, and explained that that power may be exercised only on the basis of constitutional violation. *Hills, supra,* 425 U.S. at 293, 47 L.Ed.2d at 801. The Court stated that

> [o]nce a constitutional violation is found, a federal court is required to tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation." In Milliken, there was no finding of unconstitutional action on the part of the suburban school officials and no demonstration that the violations committed in the operation of the Detroit school system had had any significant segregative effects in the suburbs. (Citations omitted.)

425 U.S. at 293-94.

Hills discussed the conclusions in *Milliken I* in detail as we have demonstrated above. Further limits established by *Milliken I* are as follows:

> The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation. Swann, 402 US, at 16, 28 L Ed 2d 554. Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.

418 U.S. at 744-45.

The Supreme Court more recently in *General Building Contractors Ass'n v. Pennsylvania*, ____ U.S. ____, ____, 102 S.Ct. 3141, 3154 (1982), has held that judicial remedial powers of the federal court can "be exercised only on the basis of a violation of the law and . . . [can] extend no farther than required by the nature and extent of . . . [the] violation."

From this discussion it is apparent that the issue before this Court is what measures are tailored to fit the scope and nature

of the State's constitutional violation. As we have seen, that constitutional violation is at most intradistrict in nature and, specifically, the failure to take measures to desegregate the St. Louis school system, particularly the north and south sides of that system. There is no hint of a finding that there was an interdistrict effect flowing from this intradistrict violation.

Under these principles the intradistrict violations found are insufficient to require the interdistrict remedy agreed to by all of the parties except the State of Missouri, and to impose the cost of this remedy on the State of Missouri. Because there are no findings by the district court as to the extent of the remedy required, this Court should not give its approval to a settlement placing substantial funding responsibility on the State of Missouri.

The Supreme Court in *Hills* concluded that selection of sites for public housing in the City of Chicago by HUD justified a remedy beyond the City of Chicago's territorial boundaries. The reasons for the conclusion were discussed as follows:

> Here the wrong committed by HUD confined the respondents to segregated public housing. The relevant geographic area for purposes of the respondents' housing options is the Chicago housing market, not the Chicago city limits. . . . An order against HUD and CHA regulating their conduct in the greater metropolitan area will do no more than take into account HUD's expert determination of the area relevant to the respondents' housing opportunities and will thus be wholly commensurate with the "nature and extent of the constitutional violation." (citation omitted.)

425 U.S. at 299-300.

Hills does not justify the conclusion reached by this Court. In *Hills* HUD had made an expert determination that the Chicago area and not simply the City of Chicago was the relevant area.

The wrongful act of HUD was confining the respondents to segregated public housing. We have no record in this case that the State of Missouri confined black students to the City of St. Louis as opposed to the county nor that the State had conceded the city and county to be the relevant area in issue. We have no finding that any of the intradistrict violations of the State which occurred within the City of St. Louis had any relationship to the county, or conversely that any acts of the State that may have been of an interdistrict nature affected the City. In *Hills* the particular facts pointed to the nature of the constitutional violation and a remedy in the larger area. *Hills* cannot support the interdistrict remedy approved by the Court today. The district court has made no findings in a vein similar to *Hills* and the Court in its opinion has reached no conclusions similar to those in *Hills* except the unsupported assertion that *Hills* justifies the remedy.

III.

The Court today bases its approval of the interdistrict transfers on the questionable ground that this issue has been previously decided. The Court's earlier decisions, in which we have discussed the nature of the constitutional violation, do not support its conclusion.

Liddell III, supra, 667 F.2d 643, dealt with the earlier order of the district court relating to a voluntary cooperative plan of pupil exchanges between the city and county (12(a)), a merger and full desegregation of the separate vocational educational programs in the county and city (12(b)), and development and submission of "a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County." 667 F.2d at 650-51. The Court, with respect to paragraph 12(a), specifically states, "[b]ecause the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up." 667 F.2d at 651. Paragraph 12(b), relating to vocational

education, was based upon a specific finding of the district court that a separate special district for vocational education was part of the State's failure to take affirmative steps to eradicate the dual system it had formally mandated, and was designed to remedy this violation.

Paragraph 12(c) in *Liddell III* relates to a suggested feasibility study and goes no farther. It recognized that to the extent that segregation was imposed by county school districts, not parties to the lawsuit and not designated as constitutional violators, it could not be considered as government-imposed. To the extent of any segregation imposed by the State or other defendants "and to the extent those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so." 667 F.2d at 651. The Court's opinion, however, cited no finding and made no conclusion that city-county interdistrict segregation was imposed by the State or the City Board. Later in the opinion, the Court specifically referred to the apportionment of costs in *Adams. Liddell III,* 667 F.2d at 654. In discussing apportionment of costs, the Court mentioned specifically the segregation existing "in the St. Louis school system." These statements but reinforce the Court's reliance on the intradistrict violation as the basis for its action. The Court today gives an overly broad reading of *Liddell III.*

In *Liddell V,* 677 F.2d 626, the Court recognized that *Adams* held that the State had contributed to the segregation "of the public schools of the City of St. Louis." Citing *Hills, supra,* it then concluded that paragraph 12(a) relating to voluntary inter-district transfers is entirely enforceable against the State defendant and that the State can be required to take actions that will further the desegregation of the city schools, even if the actions required will occur outside the boundaries of the city school district. As we have seen, the Court in *Liddell III & V* did not attempt to identify a type of constitutional violation similar to that in *Hills,* in which actions had confined a certain group of persons to one portion of the area in question, or to

demonstrate a finding, concession or conclusion that the city-county area should be considered as one. The Court was considering only "a modest beginning toward voluntary interdistrict desegregation." The Court concluded in *Liddell V* that the State and the city school board must take action to eradicate the remaining vestiges of government-imposed school segregation in the city schools. The Court's references to "actions which may involve the voluntary participation of the suburban schools; and, specifically, to "requir[ing] the state to provide additional incentives for voluntary interdistrict transfer," 677 F.2d at 641-42, were given by way of example only. The tentative suggestion that the State provide "additional incentives" is far from a conclusion that the State be required to fund a voluntary interdistrict transfer plan in which it was not a consenting party. These suggestions were made with reference to the 12(c) hearings which it suggested go forward, and which specifically related to development of a feasibility plan for overall integration. The interdistrict liability proceedings were to await this development. 677 F.2d at 642. The Court today has engaged in a massive bootstrapping effort to find that *Liddell III* or *Liddell V* has established the liability of the State for the interdistrict transfer plan.

The Court declares that we are bound by our previous holdings as to interdistrict transfers. The law of the case doctrine, however, applies with less force to prior decisions of a panel. *Van Gemmert v. Boeing Co.*, 590 F.2d 433, 436-37 n.9 (2d Cir. 1978); *aff'd*, 444 U.S. 472 (1980); 18 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure §4478 at 796-97. Resting as it does on the precarious comparison with *Hills*, even if the issue were firmly established by *Liddell V*, the Court en banc should attempt to decide the case correctly rather than consistently. *See Robbins, et al v. Prosser's Moving & Storage Co.*, 700 F.2d 433, 438 (8th Cir. 1983); *United States v. Unger*, 700 F.2d 445, 450 n.10 (8th Cir. 1983); *Wrist-Rocket Manufacturing Co. v. Saunders Archery Co.*, 578 F.2d 727, 730 (8th Cir. 1978).

IV.

The State was ordered to match funds raised in a bond issue submitted to the voters by the City Board for capital improvements. The issue failed and this Court's order rather hastily approves the summary treatment of the district court with respect to this issue.

The laws of Missouri place the responsibility for maintenance of the schools' physical plant on the City Board of Education. Mo. Rev. Stat. § 177.031 (1984). This Court in its opinion correctly describes the age, deterioration and deferred maintenance of the plant. In twenty-four years thirteen bond issues have been defeated and one in 1962 approved only after resubmission. The last two bond issues were approved by a simple majority but the constitutional requirement of two-thirds voter approval has blocked passage of these issues.

There is no finding in the district court order and no conclusion by this Court that the condition of the physical plant of the St. Louis schools is related in any way to the constitutional violations of either the City Board or the State. There is nothing to suggest that the condition is other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities. To order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found, which violates the principles laid down in *Milliken I*, *Hills* and *Swann*. This portion of the order violates the admonition of the Second Circuit in *Arthur v. Nyquist*, 712 F.2d 809, 813 (2d Cir. 1983), that "a court must be alert not to permit . . . use [of] a court's broad power to remedy constitutional violations as a means of upgrading an educational system in ways only remotely related to desegregation."

There are simply no district court findings and no conclusions by this Court to justify the State's participation in funding capital improvements. This is the sole responsibility of the City Board. Certainly in the absence of any findings by the district court that the segregative policies of the State had an impact on

the city schools' physical plant, that funding of additional capital improvements is necessary to redress such wrong, and that less ambitious efforts would not have been adequate, there is simply no basis to mandate this aspect of state funding.

V.

The Court today remands a portion of the funding order to the district court for further findings insofar as the district court issued specific mandates to the City Board with respect to its levy and the tax rollback. The Court, however, authorizes future specific action if the district court makes a finding that no other alternatives are available or sufficient to finance its desegregation order.

The Court need not and should not go this far. The taxing power of the states is primarily vested in their legislatures, deriving their authority from the people. *Green v. Frazier,* 253 U.S. 233, 239, 40 S. Ct. 499, 64 L.Ed. 878 (1920). In *Griffin v. County School Board of Prince Edward County,* 377 U.S. 218, 84 S. Ct. 1226, 12 L.Ed.2d 256 (1964), the Supreme Court ordered local authorities to operate a public school system like that operated in other counties in Virginia and to restore a tax illegally abolished, but specifically left the manner of levy and the amount and the means of collection to procedures under state law and standards. *See also Plaquemines Parish School Board v. United States,* 415 F.2d 817 (5th Cir. 1969). Our earlier decision in *United States v. Missouri,* 515 F.2d 1365 (8th Cir. 1975), *cert. denied sub. nom. Ferguson Reorganized School District v. United States,* 423 U.S. 951, 96 S.Ct. 374, 46 L.Ed.2d 288 (1975), simply permitted the tax levy to be established at the highest rate approved by voters in the largest district.

I have no quarrel with the proposition that, with proper findings that particular programs are necessary to remedy a constitutional violation that has been found to exist, a district court has the power to order the funding of those programs. The

order should simply be in the form, however, to mandate that certain programs be carried out, and legislative bodies should be left with the responsibility for structuring the local or state taxing instrumentalities to achieve the result required. The federal courts go too far in mandating specific taxing procedures. I thus agree with the Court today only insofar as it mentions the option of the district court to simply enter a judgment against the State, as tortfeasor, for the amount required to fund those programs necessary to remedy the constitutional violation.

VI.

The disagreement expressed with respect to the Court's opinion today is specifically limited to those areas set forth above. The programs required by the settlement plan within the city school district, and particularly within the all-black schools, to provide a quality education for those students deprived of proper educational opportunities by the segregative actions of defendants, and the enhancement and enrichment programs are fully justified by this Court's earlier findings of intradistrict violation. The magnet schools and integrative programs within the City of St. Louis are similarly geared to the particular violations that were found to have occurred. Thus, the opinion of the Court in III, IV (A) and (B) approved programs that are justified by the record before the district court, and this Court, and I join the Court in these portions of its opinion. The ruling on other issues in VII (A), (B) and (C) are properly reached.

The settlement plan is an inspired and far reaching one. I express my disagreement today only insofar as the State is required to fund a portion of this program that has been the subject of agreement by other parties and not the State, where there are no findings that those portions of the program are necessary to remedy the intradistrict constitutional violation that has been found. Even if the Court were to hold today in accordance with my views I believe that a settlement would nevertheless be achieved. The county school districts profit immeasurably by

the settlement agreement, as nearly all of the funding obligation is placed upon the State and they are relieved of the risk of being found to have in any way contributed to any interdistrict segregation. The State has further incentive to reach settlement as to these issues, and properly should be allowed to have a voice in the extent of the programs to be funded, because such a great portion of the expenses must be borne by the State.

BOWMAN, Circuit Judge, dissenting.

I join in Judge John R. Gibson's well-reasoned dissent concerning the lack of findings to support the interdistrict aspects of the remedy, the lack of findings to support the requirement that the State provide funding for capital improvements in the physical plant of the City schools, and the singular inappropriateness in our Constitutional system of a federal court's ordering state and local taxing authorities to impose specific tax increases. His opinion adequately reflects my disagreement with the decision of the Court in all three of those areas. I cannot agree, however, that the remaining intradistrict aspects of the remedy approved by the Court are justified by adequate findings, and for that reason I dissent separately.

The issue in this case is not whether quality education is a good thing, or whether it would be wise public policy for the State to dedicate more of its resources to the public schools. Instead, the issue is whether, on the present record, we have the Constitutional authority to compel the State to provide funding for the array of costly programs required by the settlement plan. I submit that we do not.

The costs of carrying out the plan that the Court today approves will be enormous. For the 1984-85 year alone, the State's share of these costs is likely to exceed $49,000,000, with the City school board contributing additional funds of approximately $15,000,000. These costs, and particularly the State's share, will increase very substantially in future years as the pace of implementation quickens. If these costs are necessary to remedy a Constitutional violation, then they must be borne by the respon-

sible parties—and ultimately by the citizens of the State—no matter how financially painful compliance may be. But if these costs go beyond what is needed to right a Constitutional wrong, if in fact the plan includes programs and amenities that may be laudable from an educational standpoint but are not tailored to the incremental segregative effects that have been caused by the Constitutional violation, then the effect of the Court's decision is to transfer, without any basis in law or the Constitution, funds from taxpayers or other competing programs (including other needy school districts) to the beneficiaries of this plan. Our problem as a reviewing court is that the record gives us no basis for an intelligent and principled determination of the critical question in this case: on which side of the line—Constitutional necessity or judicial excursion into policy-making and educational experimentation—do the various components of the plan approved by the district court fall?[1]

---

[1] A few examples will serve to illustrate the problem. The plan approved by the Court includes millions of dollars for such things as preschool centers, all-day kindergartens, schools of emphasis (which are in addition to the magnet schools), parental involvement, and Saturday classes. The magnet school component, as presently structured, will require over $22,000,000 during the plan's first two years. During 1984-85 alone, the plan would provide $1,762,000 for an item designated "Coordination of Instruction"—whatever that may entail. It was not even mentioned, much less discussed or made the subject of fact-finding, during the hearing conducted by the district court, and the same is true of virtually all the plan's specific items. Substantial funding is provided for "Curriculum Development," "Peer Tutoring," "Shared Motivation," "Role model experiences," and "Strengthen the capabilities of the public affairs unit." The capital improvements section of the plan purports to "ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process." While the professional educators who drafted the plan may be forgiven for writing that way, we should not be forgiven if we allow this plan to go into effect without first insisting that it be examined in the manner the Constitution requires. Because of the lack of appropriate inquiry and fact-finding below, there is now no jurisprudentially acceptable way for us to determine whether any of these items are needed to remedy the Constitutional violation.

We do not have before us a desegregation plan fashioned by the district court after careful findings of fact of the kind required by the Supreme Court in *Dayton Bd. of Educ. v. Brinkman,* 433 U.S. 406, 417, 420 (1977). Rather, what we have before us is a desegregation plan fashioned by agreement of the City school board, the suburban school boards, and the plaintiffs. The State, which must bear the brunt of the costs, is not a party to the agreement. Over the objections of the State, the district court has adopted the agreement or plan, and it has done so without inquiring into the continuing effects of the Constitutional violation and the need for the various programs included in this plan to remedy those continuing effects.

In considering the proposed plan, the district court merely conducted a hearing to determine whether the proposed settlement plan "is fair, reasonable, and adequate for the resolution of *the 12(c) interdistrict phase* of this school desegregation case." *Liddell v. Bd. of Educ.,* 567 F. Supp. 1037, 1039 (E.D. Mo. 1983) (emphasis added). Thus the district court's inquiry was nothing more than the inquiry required under Rule 23(e), Fed R. Civ. P., to determine whether a settlement of a class action should be approved. Moreover, the inquiry was focused on the *interdistrict* phase of the case, not the *intradistrict* phase. Finding the plan satisfactory in terms of the Rule 23 considerations set forth in *Grunin v. Int'l House of Pancakes,* 513 F.2d 114, 123 (8th Cir.), *cert. denied,* 423 U.S. 864 (1975), and in Professor Moore's discussion of Rule 23, 3B Moore's Federal Practice ¶ 23.80[4] at 23-521 through 23-524, and giving a few obligatory bows to the Constitution in language wholly conclusory, the district court approved the plan and ordered all signatories, as well as the State defendants, to comply with all its provisions. 567 F. Supp. at 1042, 1055.

The district court's approach and its findings are totally inadequate to provide a Constitutional basis for its sweeping order and the only slightly less sweeping order that this Court today approves. The Constitutional violation that has been

found against the City school board and the State[2] would justify requiring them to create a unitary school system within the City school district, but it does not justify the judicially-compelled creation of a system that never would have existed even if *de jure* segregation never had been practiced in the City schools. As the Supreme Court has made clear, the remedy in a school desegregation case should restore the students in the affected school district " 'to the position they would have occupied in the absence of such conduct.' " *Milliken v. Bradley,* 433 U.S. 267, 280 (1977) (citation omitted) (*Milliken II*). Similarly, in *Dayton, supra,* the Supreme Court has made our duty—and the limits of our authority—plain. In that case the Court was dealing, as we are dealing here, with a situation where *de jure* segregation of the races in the schools ceased many years ago. If, said the Court, Constitutional violations are found, then

> [T]he District Court in the first instance, subject to review by the Court of Appeals, must determine how much incremental segregative effect these violations had on the racial distribution of the Dayon school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if there has been a systemwide impact may there be a systemwide remedy.
>
> We realize that this is a difficult task, and that it is much easier for a reviewing court to fault ambiguous phrases such as 'cumulative violation' than it is for the finder of fact to make the complex factual determinations in the

---

[2] As Part I. of Judge John R. Gibson's separate opinion demonstrates, the exact nature of the Constitutional violation previously found in this case is not easily determined. I agree, however, with his conclusion that the violation found on the part of the City school board and the State is failure to take adequate steps to desegregate the schools throughout the City.

> first instance. Nonetheless, that is what the Constitution and our cases call for, and that is what must be done in this case.

Dayton, 433 U.S. at 420 (citation omitted).

In the case now before us, there has been no attempt to determine the incremental segregative effects of the Constitutional violation committed by the defendants or to compare the present City school population to what it would have been absent a violation. There has been no tailoring of the order to redress only "that difference" referred to in *Dayton* or to restore students in the City schools "to the position they would have occupied in the absence of such conduct" as required by *Milliken II.*

The district court's failure to conduct a *Dayton*-type inquiry and to make findings on incremental segregative effects has rendered it impossible for this Court properly to review the district court's order. This failure has left us without any measuring stick by which we can assess the various components of the settlement plan. The opinion of the Court implicitly recognizes this difficulty when, in searching for some standard to guide its review of certain of the compensatory and remedial programs approved by the district court, the Court resorts to a school classification device—Class AAA status—developed by the State's Department of Education as a means of rating schools, and approves programs necessary to permit the City schools to regain and retain their Class AAA status. Although the Court's need to find a standard to which it can repair is understandable, I do not believe that the approach taken is sound. There has been no showing of any kind that in the absence of the defendants' Constitutional violation the City schools would have maintained Class AAA status. Thousands of Missouri school children, over one-quarter of the total number, attend schools that lack Class AAA status. That fact alone, when coupled with the recent restoration of the City schools to Class AAA status, casts considerable doubt on the

proposition that any educational problems that may exist within the City schools are of unusual severity or that they rise to a level of Constitutional concern. In any event, we cannot simply make assumptions about the continuing harms that have flowed from the violation; rather, these harms must be determined by the kind of fact-finding by the district court and review by this Court that *Dayton* mandates.

The process by which the settlement plan came into being underscores the need for careful fact-finding before imposing the plan and its burdensome costs upon the State. In the first place, it would be a most remarkable coincidence if a plan intended to settle the broad interdistrict claims in this case was at the same time properly tailored to cure only the effects of the intradistrict violation. Moreover, it must be remembered that the negotations leading to the plan largely excluded the State, at least during the critical latter stages when it had become apparent to the State that it could not agree to a plan of the scope and cost that the other parties were determined to achieve. The plan was expressly conditioned upon compulsory funding from the State, and all the participating school districts stood to reap substantial benefits. None of them had any real incentive to prevent the others from piling their plates high with programs and funds that would benefit their school systems. As might be expected, there is no indication that the parties to the negotiations made any attempt to measure the incremental segregative effects of the violation on which the plan rests or to remedy only those effects. Such negotiations are inherently unlikely to produce a remedy narrowly tailored to the Constitutional wrong and any present-day educational deficiencies resulting therefrom that fairly may be charged to the State and, through it, to citizens in all walks of life throughout the State. Thus the need for judicial alertness, and careful fact-finding, is especially critical in this case.[3]

---

[3] The looseness, vagueness, and uncertainties of the plan were emphasized by one of the witnesses at the hearing before the district court:

For the reasons stated above, I would reverse the judgment of the district court and remand the case to the district court for further proceedings consistent with this opinion. I would hope, of course, that the parties could resume their negotiations and achieve a settlement agreement to which all could assent.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

> In nearly every program budget [of the plan], one can point to some strange budget items, some budget items which are not consistent with the description, certainly not with the planning as is in the case of many programs and I would not approve it under any circumstances until all those points were clarified, until it was clear what was expected to happen as a result of the expenditure of money, and only then if one could conclude it would not interfere so extensively with the programs in the City that they would be rendered in poorer shape than they are.

Testimony of Otis Baker, Coordinator of State and Federal Programs, Division of Instruction, State Department of Elementary and Secondary Education. Tr. of Fairness Hearing, p. 169. Another witness, an out-of-state "expert" presented by the proponents of the plan, acknowledged during cross-examination that to her knowledge there is not another urban school system in the United States that has all the components that are included within the quality education improvements contained in the settlement plan. Testimony of Carol Gibson, Director of Education, National Urban League. Tr. of Fairness Hearing, p. 1-195. One of the opponents' witnesses made the following observation concerning the quality education improvements portion of the plan:

> This whole section of the proposal looks to be an attempt by the Saint Louis school board to justify every expense they now have and every kind of expenses they can dream up for the future, as a part of the desegregation case. We well remember their earlier attempt to have general maintenance and painting needs become a part of the start-up expenses for implementing the 12(a) plan now in effect.

Testimony of Shannon K. Burnside, President, West County Association for Neighborhood Schools. Tr. of Fairness Hearing, p. 3-49, 50.

(4)

Office - Supreme Court, U.S.
FILED
MAR 24 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

On Petition for Writ of Certiorari To The
United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Missouri 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

BEST AVAILABLE COPY

13 pp

PARTIES BELOW

The petition for writ of certiorari inadvertently omitted to identify the following parties below:

> St. Louis Teachers Union Local 435, American Federation of Teachers;
>
> North St. Louis Parents and Citizens for Quality Education, an unincorporated association, including William Upchurch, Vivian Ali, and Dorothy Robins, parents of children attending the St. Louis city public schools and members of the regional plaintiff classes who objected to the settlement agreement.

TABLE OF CONTENTS

	Page
Parties Below	i
Table of Contents	iii
Opinions Below	2
Statement of the Case	2

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue of the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis,
and
the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, et al.
Respondents.

On Petition for Writ of Certiorari To The
United States Court of Appeals for the Eighth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

Pursuant to Supreme Court Rule 22.6, petitioners submit this supplemental brief concerning developments below since the filing of the petition.

OPINIONS BELOW

On March 5, 1984, the United States Court of Appeals for the Eighth Circuit recalled and modified its mandate in the cases before it, Nos. 83-1957, 2033, 2118, 2140, 2220 and 2554, *Craton Liddell, et al. v. State of Missouri, et al.* The orders entered on March 6 are reprinted in the appendix to this supplemental brief.

STATEMENT OF THE CASE

The interdistrict settlement agreement, appendix C to petition for writ of certiorari, which generated the judgments below in this case, called for the State of Missouri to finance transfers of students among school districts located in St. Louis County, Missouri. None of the districts involved had been implicated in the intradistrict constitutional violation committed by the State in the City of St. Louis school district. In its en banc opinion filed February 8, 1984, the Court of Appeals held that these "county-to-county" transfers constituted an impermissible interdistrict remedy. See Appendix K to petition, pp. A-428-A-429.

On March 5, 1984, the Court of Appeals disposed of various motions and a petition for rehearing in this case. The Court modified its prior opinion and mandate to require the State of Missouri to continue to fund certain transportation and other costs of "county-to-county" interdistrict transfers in the St. Louis metropolitan area for the remainder of the 1983-84 academic year. Supp. App. A-3. The Court also held that the district court could, at the end of the school year, apportion the "county-to-county" transfer costs incurred by the State after February 21, 1984, among the signatories to the settlement *and* the State "in such proportions as it deems fair and equitable." Supp. App. A-4. Four judges dissented from the holding insofar as it required the State to share the cost.

The order amending the mandate of the Court of Appeals does not appear to affect the questions presented by the instant petition for writ of certiorari.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, Mo. 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
FRANCIS M. OATES
Associate City Counselors
EDWARD J. HANLON
Assistant City Counselor
314 City Hall
St. Louis, Mo. 63103
(314) 622-3361

Attorneys for Petitioners

*Counsel of Record

March, 1984

APPENDIX

SUPPLEMENTAL APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1983

No. 83-1957, 2033, 2118,
2140, 2220 & 2554

Craton Liddell, et al.,
Appellees,

v.

State of Missouri, et al.,
Appellants.

Appeal from the United States
District Court for the
Eastern District of Missouri

ORDER

On the Court's own motion the mandate of this Court issued on February 8, 1984 is hereby recalled and the Clerk of this Court is directed to issue a new mandate in conformity with the order of March 5, 1984.

March 5, 1984.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Nos. 83-1957, 83-2033, 83-2118,
83-2140, 83-2220, 83-2554

Craton Liddell, et al,
Appellees,

v.

State of Missouri, et al,
Appellants.

On Motion to Clarify Opinion
and to Dissolve Stay.

Filed: March 5, 1984

Before LAY, Chief Judge; HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG, and BOWMAN, Circuit Judges, *En banc.*

ORDER

On February 8, 1984, this Court filed its opinion in the St. Louis school desegregation cases. We directed that our mandate be issued forthwith. Thereafter, the State of Missouri notified the St. Louis County schools that it would discontinue payments for transporting students between county schools on

February 17, 1984. It sent a similar notice to the parents of children participating in such transfers. Subsequently, the county schools and the Caldwell plaintiffs moved this Court for an order directing the State to continue to pay for transporting the county-to-county transfer students for the balance of the 1983-84 school year. At oral argument, it became clear that fiscal incentives for sending and receiving school districts were intended to be included within the purview of the parties' motions.

We consider the motions filed as motions to recall our mandate and to clarify or modify our opinion in the interests of justice. *See Dilley v. Alexander,* 627 F.2d 407, 410-411 (D.C. Cir. 1980); *Reserve Mining Co. v. Lord,* 529 F.2d 181, 183 (8th Cir. 1976); *Reserve Life Ins. Co. v. Pitfield MacKay & Co.,* 528 F.2d 120, 123 (8th Cir. 1976); *Greater Boston Television Corp. v. FCC,* 463 F.2d 268, 275-279 (D.C. Cir. 1971), *cert. denied,* 406 U.S. 950 (1972).

In our view, it would be inequitable to disrupt the education of the 311 students affected. It has been the consistent view of this Court in school desegregation cases that we will avoid disruption during the school year whenever possible. *See, e.g., Liddell v. Missouri,* 717 F.2d 1180, 1182-1183 (8th Cir. 1983) (en banc) (*Liddell VI); Liddell v. Bd. of Educ.,* 667 F.2d 643, 654 (8th Cir. 1981) (*Liddell III), cert. denied,* 454 U.S. 1081, 1091 (1982). *Cf. Lemon v. Kurtzman,* 411 U.S. 192, 194, 199-200 (1973); *Missouri ex rel. Freeman v. Block,* 690 F.2d 139, 144-145 (8th Cir. 1982) (equitable considerations important in remedial context).

We thus order the State to continue to fund county-to-county transfers for the balance of the current school year, including payments for transportation and fiscal incentives to sending and receiving school districts. At the end of the current school year, the State and the county school districts shall attempt in good faith to allocate the costs incurred by the State from February 21, 1984, to the end of the school year between the State and all

county school districts that are signatories to the settlement agreement. If they fail, the district court shall, after an appropriate hearing, allocate the costs between the county school districts which signed the settlement agreement and the State in such proportions as it deems fair and equitable. If any party objects to this allocation, it may take an expedited appeal to this Court. We note that in determining the costs of transporting county students, only those costs that would not otherwise have been incurred by the State pursuant to this Court's opinion should be included.

We have before us a motion to dissolve a temporary stay issued by Judge Theodore McMillian for lack of jurisdiction. This issue has been mooted by the present order.

We also have before us a request by the Kirkwood school district for clarification of our opinion. In response to that request, we note that the State is oligated to pay fiscal incentives to a county school district which establishes a magnet school and receives black students from the City school district. Such State payments shall not, however, exceed the amount the county school district would receive if these transfer students were enrolled in the county's regular school. We direct that future requests for clarification of this Court's opinion should be taken initially to the district court.

The mandate previously issued is reconsidered and amended as indicated by this order. As amended, the mandate of this Court shall issue forthwith. To the extent not granted by this order, the petition for rehearing filed by the Parkway school district is denied.

Concurring and dissenting opinion of HEANEY, ROSS, JOHN R. GIBSON and BOWMAN, Circuit Judges.

We agree that the 311 county students who are now attending a district other than their own school should be permitted to complete the school year in the school they currently attend,

and that the State should initially be required to cover these costs.

We also agree that at the end of the school year, the cost of permitting these students to finish the school year should be allocated by the district court. We would, however, require that court to allocate the cost among the county school districts that are signatories to the settlement agreement. We would not require the State to bear any costs of these transfers other than those incurred prior to February 21, 1984.

A true copy.

Attest: /s/ Robert D. St. Vrain

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

(5)

Supreme Court, U.S.
FILED
APR 11 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue in the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis
and
THE CITY OF ST. LOUIS,
Petitioners,

vs.

CRATON LIDDELL, etc., et al.,
Respondents.

BRIEF OF RESPONDENTS ST. LOUIS COUNTY, MISSOURI, COUNTY EXECUTIVE GENE McNARY, and COUNTY COLLECTOR GEORGE LEACHMAN IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

THOMAS W. WEHRLE
St. Louis County Counselor
*ANDREW J. MINARDI
Associate County Counselor
County Government Center
41 South Central
*Counsel of Record Clayton, Missouri 63105
Attorneys for Respondents
St. Louis County, Missouri,
St. Louis County Executive and
St. Louis County Collector

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

14 pp

BEST AVAILABLE COPY

QUESTIONS PRESENTED

PARTIES

St. Louis County Government Defendants adopt the Petitioners' statement of questions presented and listing of parties.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties	i
Table of Contents	iii
Table of Authorities	iv
Opinions Below	2
Jurisdiction	2
Statement of the Case	2
Reasons for Granting the Petition for Writ of Certiorari	4
I. The Petition Should Be Granted Because This Court Needs To Definitively Resolve Whether Federal Judges Do In Fact Have The Authority To Tax By Judicial Fiat In The Name Of "Equity" To Effectuate What A Judge Believes To Be A Social Good To The Detriment Of Other Social Goods Without Regard To the Doctrine Of The Separation Of Powers Or The Will Of The People. If This Court Finds Such Authority Within The Increasing Weaponry Of A Federal Judge's Arsenal, This Court Needs To Definitively Resolve And Define The Parameters, Scope And Authority Of A Federal Judge To Impose Taxation Without Representation	4

II. The Petition Should Be Granted Because There Are Significant Issues In Remaining Portions Of The Case To Be Decided Which Will Be Materially Contaminated By The Court Of Appeals' And District Court's Disregard For The Federal Rules Of Civil Procedure, Their Determination Of Liability Without Proper Findings Of Fact And The Court Of Appeals' Willingness To Disregard Its Own Legal Conclusions. All This Suggests That Supervision By This Court Is Required To Demand Fair Treatment Of All Parties . 6

Conclusion 9

TABLE OF AUTHORITIES

Cases

Dayton Bd. of Education v. Brinkman, 433 U.S. 406 (1977) 7

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964) 5

Milliken v. Bradley, 433 U.S. 267 (1977) (Milliken I) ... 7

Oliver v. Kalamazoo Bd. of Education, 640 F.2d (6th Cir. 1980) 7

Palmer v. Thompson, 403 U.S. 217 (1971) 5

United States v. Missouri, 515 F.2d 1865 (8th Cir. 1975) 9

Constitutions, Statutes and Rules

Rule 52, F.R.Civ.P. 7

Mo. Const. art. VI, Section 18(c) 2

Mo. Const. art. X, Section 15 2

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
Collector of Revenue in the City of St. Louis,
HON. PAUL M. BERRA,
Comptroller of the City of St. Louis
and
THE CITY OF ST. LOUIS,
Petitioners,

vs.

CRATON LIDDELL, etc., et al.,
Respondents.

BRIEF OF RESPONDENTS ST. LOUIS COUNTY, MISSOURI, COUNTY EXECUTIVE GENE McNARY, and COUNTY COLLECTOR GEORGE LEACHMAN IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Comes now Respondents St. County, Missouri, a constitutional charter county of the State of Missouri, County Executive Gene McNary, and County Collector George Leachman (hereinafter "St. Louis County Government Defendants") and respectfully offer this brief in support of the petition of the Collector of Revenue in the City of St. Louis, Comptroller of the City of St. Louis, and the City of St. Louis, Missouri, for writ of certiorari to the United States Court of Appeals for the Eighth Circuit, to review its judgement entered on February 8, 1984, in this case, as modified by order dated March 5, 1984.

OPINIONS BELOW

JURISDICTION

St. Louis County Government Defendants adopt the statement of Opinions Below and Jurisdiction in Petitioners' petition.

STATEMENT OF THE CASE

St. Louis County Government Defendants agree with and adopt the Statement of the Case presented by the Petitioners, and offer the following statement for clarity.

St. Louis County, Missouri, is a constitutional charter county which does not contain the City of St. Louis within its boundaries. The City of St. Louis, Missouri, seceded from St. Louis County, Missouri, in 1875, and performs the function of both a city and a county. Thus, when Petitioners' brief states that the "Collector of Revenue, and independent elected *county* official not part of City government, must collect all taxes appearing on real and personal property tax bills and defends against all taxpayer protest actions and suits to enjoin collection" (Pet. 5, emphasis added), it is not meant that the Collector of Revenue is a St. Louis County official, but rather an official in St. Louis City performing "county" functions within the city. The word "county" is also used loosely throughout the opinions to refer to the county school districts (see, e.g., A-451 and A-408b), which are not part of St. Louis County Government. (All references are to Petitioners' Appendix.) By constitution, St. Louis County is precluded from exercising legislative power pertaining to school districts. Mo. Const. art. VI, Section 18(c). School districts in St. Louis County are separate political subdivisions of the State of Missouri. Mo. Const. art. X, Section 15.

A reading of the petitions in this case (see A-179 through A-230), and the settlement agreement which purports to settle the case (A-53 through A-144), shows that not all defendants are signatories and that not all issues are resolved. There remain charges relating to "housing" issues against "housing" defendants which are yet to be litigated. St. Louis County Government Defendants are concerned that they will be faced with federal courts who are bent toward assuming control over and dispersal of local tax monies upon the slightest provocation without any declaration of the law by this Court establishing the proper parameters, should any exist, for such action. State and local treasuries are now subject to judicial raids for judicial "programs."

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. The Petition Should Be Granted Because This Court Needs To Definitively Resolve Whether Federal Judges Do In Fact Have The Authority To Tax By Judicial Fiat In The Name Of "Equity" To Effectuate What A Judge Believes To Be A Social Good To The Detriment Of Other Social Goods Without Regard To The Doctrine Of The Separation Of Powers Or The Will Of The People. If This Court Finds Such Authority Within The Increasing Weaponry Of A Federal Judge's Arsenal, This Court Needs To Definitively Resolve And Define The Parameters, Scope And Authority Of A Federal Judge To Impose Taxation Without Representation.

This is not a case where the law on judicial taxation is newly developing and should be allowed to ferment in the lower courts until it is ripe for Supreme Court action. The separation of powers spawned by arbitrary imposition of taxation was fundamental to the reasons our country was established, and cannot be easily distinguished out of existence by a result-oriented court bent on social engineering without regard to the nature and scope of the wrong to be redressed.

The scholarly and exhaustive brief of Petitioners Leggett, Berra, and the City of St. Louis requesting issuance of the writ of certiorari highlights and documents the misuse of precedent which court of appeals and the district court have used to justify their truly unprecedented exercise of powers never granted to the judiciary. The thorough treatment of petitioners will not be repeated by St. Louis County Government Defendants, who seek to emphasize the important nature and broader significance of the issues presented by Petitioners.

Review of cases of this Court easily convinces that all legal barriers for complete social reform by the judiciary do not crumble upon a finding of constitutional violations. Each branch of our federal government has its limitations. It is im-

perative that this Court acknowledge and define the limits of the federal judiciary in the area of taxation and acknowledge that the power to tax is not a power of the judiciary.

In *Palmer v. Thompson,* 403 U.S. 217 (1971), this Court explicitly acknowledged its inability to legislate new laws once a constitutional violation had been found. While it had been clearly illegal for Jackson, Mississippi to operate segregated swimming pools, only Congress possessed the broad constitutional power to order the affirmative steps requested in the absence of a present and continuing violation. This Court acknowledged that financial considerations could justify reducing governmental services to all persons, even where one race had received preferential treatment previously. There was nowhere even a hint that the federal judiciary could control Jackson's taxes to compensate for prior wrongs.

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964), supports the position of petitioners. In fashioning a remedy to compel defendant school district defendants to operate non-discriminatory schools, this Court carefully chose its language to reflect that the funding be provided by application of state law, which was not usurped by the Federal judiciary.

We have been separated by centuries from the degree of governmental oppression which gave birth to the form of federal government we now take for granted. This Court has refused to let that gap of time engender judicial apathy and carelessness in areas touching upon other precious rights, such as those guaranteed defendants in criminal cases. How ironic that the federal judiciary, guardian of fundamental rights upon which our country was founded, now is the proponent of changing the allocation of power between state and federal government and between the judiciary and the people.

This Court should grant the petition to give the serious, detached consideration to the legal and constitutional issues af-

fecting taxation which have yet to be thoughtfully analyzed and balanced in this case.

II. The Petition Should Be Granted Because There Are Significant Issues In Remaining Portions Of The Case To Be Decided Which Will Be Materially Contaminated By The Court Of Appeals' And District Court's Disregard For The Federal Rules Of Civil Procedure, Their Determination Of Liability Without Proper Findings Of Fact And The Court Of Appeals' Willingness To Disregard Its Own Legal Conclusions. All This Suggests That Supervision By This Court Is Required To Demand Fair Treatment Of All Parties.

To this point in this case, no order has been entered by any Court adjudicating any rights or liabilities with respect to St. Louis County Government Defendants nor requiring the county to perform or refrain from performing any act. However, dangerous precedent is being established which, if unchecked by this Court, could produce devastating procedural and substantive results against St. Louis County Government Defendants in remaining phases of this case as well as markedly changing the law of the land affecting defendants in future cases.

The momentum of this case, set by the district court and the court of appeals and not by the parties, has been toward implementing broad social reform which the court of appeals has found desirable without regard for the law regarding findings of liability.

As an example of this, the February 8, 1984, opinion of the Eighth Circuit, in its statement of facts, and on its face reflects the unusual character of the proceedings.

> "The district court entered an order on August 6, 1982, which disclosed the mandatory interdistrict plan it would impose in the event the suburban school districts were found liable for constitutional violations. This plan would create one unified metropolitan school district with a

> uniform tax rate. The court then scheduled interdistrict liability hearings."

(Appendix K, A-409). That the district court could formulate a remedy prior to determination of liability and still comply with the indisputable constitutional requirement that "the nature of the desegregation remedy is to be determined by the nature and scope of the constitutional violation", *Milliken v. Bradley,* 433 U.S. 267, 280-81 (1977) (Milliken I), *Dayton Bd. of Education v. Brinkman,* 433 U.S. 406 (1977), is, to defendants yet to be tried in this action, frightening. If the requirement of finding of fact for the tailoring of remedy can be satisfied when the remedy is determined first, it is hard to see why this Court has wasted so much judicial effort expounding on the requirements in cases such as *Milliken I* and *Brinkman.* The court of appeals here, however, found nothing unusual. For proper appellate concern for the necessity of fact-finding, see *Oliver v. Kalamazoo Bd. of Education,* 640 F.2d 782 (6th Cir. 1980), where the court of appeals refused to assume the facts establishing the extent of the violation or necessary scope of the remedy. Unlike this case, more than lip service was paid to the requirements of findings to support a court's conclusions.

The court of appeals in an unusual acknowledgement of the requirement of findings to support a judgment, as required by Rule 52, F.R.Civ.P., determined that the district court's order of July 5, 1983, enjoining the tax rollback due St. Louis City residents under state law "was deficient in that it was not accompanied by a factual finding by the district court that all other fiscal alternatives were unavailable or insufficient." (A-455) Surprisingly, however, the court of appeals felt it could "sustain the injunction against the rollback for the balance of this school year" for "equitable" reasons. St. Louis County Government Defendants, as defendants in the "housing" issues remaining before the district court, are faced with the precedent of possibly having to pay for admittedly unjustified "remedies" once a federal court invokes equitable considerations that places

plaintiffs in a superior position, though legally unjustifiable, to county's citizens.

It is one thing to be faced with a district judge who determines the remedy before the violation, but to be further confronted by an appellate court which does not limit itself to a reviewing function, but actively redefines the scope and even purpose of the lawsuit is another. An example of the restructuring of the litigation occassioned by the court of appeals can be found in its discussion of the objective of a major component of the settlement agreement. Although the court of appeals believed that "the objective of transfers between the city and county is the eradication of segregation within the city" (Appendix K, A-428) and therefore denied state funding for county-district to county-district transfers, that was clearly not the intent of the parties. The petitions filed by plaintiffs reflects their intent to pursue claims of discrimination in county school districts. (See, for example, Appendix F, A-197, paragraph 35.) The settlement agreement was intended to settle those claims also. (See introduction to settlement agreement, Appendix C, A-55). Parties are not only litigating against each other, but with the knowledge that regardless of what they do, the court of appeals will use the appellate review process to modify the result of the district court to achieve a result not sought by any party to the litigation. Because review by this Court is so difficult to obtain, the parties are essentially denied review by a detached, disinterested appellate court.

The record in this case, as discussed under this point, shows not only that questions regarding legal principles affecting taxation need to be addressed by this Court, but that the whole atmosphere of the proceedings below need to be analyzed to determine whether they are consistent, when viewed as a whole, with American concepts of due process and fairness.

CONCLUSION

If this Court refuses to intervene to demand that the lower courts obey substantive and procedural law, the message the court of appeals infers will be clear. Judicial taxation was initially imposed by this same court of appeals in *United States v. Missouri,* 515 F.2d 1365 (8th Cir. 1975), cert. denied, 423 U.S. 951 (1975). The court of appeals has in this case travelled further into areas previously off limits to the courts. A denial of certiorari again will be but another fact which "cannot be overlooked" (opinion of February 8, 1984, Appendix K, A-419, note 8) and will mislead the court of appeals into believing that judicial taxation is the law of the land as sanctioned by this Court. This, combined with the unusual procedure and atmosphere of the proceedings in the courts below, provides ample basis for this Court's granting of a writ of certiorari to study the issues more clearly.

Respectfully submitted,

THOMAS W. WEHRLE
St. Louis County Counselor

*ANDREW J. MINARDI
Associate County Counselor
County Government Center
41 South Central
Clayton, Missouri 63105
(314) 889-2042

*Counsel of Record

Attorneys for Respondents
St. Louis County, Missouri,
St. Louis County Executive and
St. Louis County Collector

Office - Supreme Court, U.S.
FILED
JUL 23 1984
ALEXANDER L. STEVAS
CLERK

No. 83-1386

IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

HON. RONALD A. LEGGETT,
COLLECTOR OF REVENUE OF THE CITY OF ST. LOUIS,
HON. PAUL M. BERRA,
COMPTROLLER OF THE CITY OF ST. LOUIS,
and the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR THE STATE RESPONDENTS

JOHN ASHCROFT *
Attorney General
EDWARD D. ROBERTSON, JR.
Deputy Attorney General
Supreme Court Building
Jefferson City, MO 65102
(314) 751-3321

H. BARTOW FARR, III
JOEL I. KLEIN
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184

* Counsel of Record

Counsel for Respondents

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT	1
ARGUMENT	3
CONCLUSION	10

TABLE OF AUTHORITIES

CASES: Page

Delaware Valley Citizens' Council v. Commonwealth of Pennsylvania, 678 F.2d 470 (3d Cir. 1982) 9
Edelman v. Jordan, 415 U.S. 651 (1974) 6
Evans v. Buchanan, 582 F.2d 750 (3d Cir. 1978) 8, 10
Fair Assessment in Real Estate Ass'n v. McNary, 454 U.S. 100 (1981) 4
Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943) 4
Griffin v. School Board of Prince Edward County, 377 U.S. 218 (1964) 6, 7, 8
Louisiana ex rel. Hubert v. Mayor and Council of New Orleans, 215 U.S. 170 (1909) 7
Milliken v. Bradley, 433 U.S. 267 (1977) 7, 8
New York State Ass'n for Retarded Children v. Carey, 596 F.2d 27 (2d Cir. 1979) 8
New York State Ass'n. for Retarded Children v. Carey, 631 F.2d 162 (2d Cir. 1980) 7, 9
Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969) 6
Rees v. City of Watertown, 86 U.S. (19 Wall.) 107 (1874) 9
Rhem v. Malcolm, 507 F.2d 333 (2d Cir. 1974) 7
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 4
United States v. Board of School Commissioners, 677 F.2d 1185 (7th Cir. 1982) 8, 9
United States v. County of Clark, 95 U.S. (5 Otto) 769 (1877) 7

STATUTES:

Mo. Rev. Stat. 164.013 (Proposition C) 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1386

HON. RONALD A. LEGGETT,
COLLECTOR OF REVENUE OF THE CITY OF ST. LOUIS,
HON. PAUL M. BERRA,
COMPTROLLER OF THE CITY OF ST. LOUIS,
and the CITY OF ST. LOUIS,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

BRIEF FOR THE STATE RESPONDENTS

STATEMENT

Respondent the State of Missouri is a defendant in the school integration proceedings that led petitioner the City of St. Louis to file the present petition for a writ of certiorari. As does the State in its own petition, *Missouri v. Liddell*, No. 83-1721, filed April 20, 1984, the City here seeks review of a February 8, 1984 decision of the *en banc* Eighth Circuit, which affirmed most aspects of a district court order approving an extraordinary new remedial plan. That plan, in turn, had been submitted to the district court by the plaintiffs and var-

ious school boards, including defendant the St. Louis School Board (the "City Board").[1]

The plan provides for large-scale voluntary transfers of thousands of pupils between St. Louis and suburban school districts, expanded "magnet schools," substantial changes to improve the quality of education in the St. Louis schools, and extensive capital improvements. The parties drafting the plan also agreed that the new remedies would be funded by "such combination of State funding and a tax rate increase in the City of St. Louis as shall be provided by the Court" (Pet. App. 129), and called on the court to enter such a funding order. (Pet. App. 125). Those parties specified that their obligations under the plan were contingent upon entry of a satisfactory order.

In approving the settlement, and imposing its terms upon the nonconsenting State, the court entered just such an order. The order required the State to pay 100 percent of many costs of the Settlement Plan, including the costs of transferring students and creating new magnet schools, and to bear 50 percent of the remaining costs. With regard to the share imposed upon the City Board, the court, in addition to calling for a capital bond issue, required the State to continue paying the Board the special sales tax distribution authorized by Mo. Rev. Stat. § 164.013 (Proposition C), even as it prohibited the Board from complying with the condition on Proposition C funds—lowering property taxes by 50 cents for every dollar received. (Pet. App. 38). The order went so far as to provide that the property taxes would be raised if necessary.

The court of appeals disapproved certain particulars of the district court order but made clear that similar, if not

---

[1] The plan was styled as a settlement of certain pending "interdistrict" school segregation claims. The State and City Board had previously been found liable only with respect to "intradistrict" claims—*i.e.*, claims limited to the City of St. Louis.

identical, provisions could be entered on remand. It did, however, direct the district court to explore other options before insisting upon payment of Proposition C funds or requiring an increase in local property taxes. At the same time, it emphasized its "conviction that the district court's equitable power includes the remedial power to order tax increases or the issuance of bonds * * *." (Pet. App. 453).

ARGUMENT

In its own pending petition for certiorari (No. 83-1721), the State of Missouri has pointed to three aspects of the Eighth Circuit's decision that show very little regard for the proper limits on federal judicial intrusion into state and local affairs. First, the court upheld an order based upon a settlement plan and imposed it upon a nonsettling party without any findings or inquiry into its relation to the limited constitutional violation previously established. Second, the court approved multidistrict busing and magnet schools designed to provide integration unavailable within the district where the violation occurred, even though the racial distribution of students among the affected districts was in no way causally related to any constitutional violation. Third, the court largely affirmed an enormous quality education and rebuilding program despite the absence of any constitutional entitlement to such a program and despite the fact that any shortcomings in the St. Louis system resulted from neglect by the City Board and not from any prior condition of segregation. The result, as we noted, was a plan that simply rearranged state priorities at an unprecedented cost and without any grounding in defined constitutional rights or legitimate equitable powers.

In the present petition, the City of St. Louis emphasizes another improper aspect of the decisions below: the willingness of the district court and the Eighth Cir-

cuit to fashion court decrees that require the levying of specific state or local taxes. The State, as respondent here, urges the Court to grant the City's petition. Like the City, we believe that the Eighth Circuit's discussion of the taxation issue not only conflicts with the decisions of this Court and other circuits but creates the potential for serious judicial mischief in the guise of remedying constitutional violations.

This Court has repeatedly recognized that the prospect of a state tax system being rearranged through the orders of a federal court is offensive to our system of federalism. *See Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100 (1981); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293 (1943). The problem, in part, stems from the capacity of courts to undertake such a task. By its nature, the federal judiciary lacks "both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." *San Antonio Independent School District v. Rodriguez, supra*, 411 U.S. at 41. In addition, of all the areas of state decisionmaking, tax policies are among the most sensitive. "Interference with state internal economy and administration is inseparable from assaults in the federal courts on the validity of state taxation . . . ." *Great Lakes Dredge & Dock Co. v. Huffman, supra*, 319 U.S. at 298.

The courts below, however, showed no respect for such sovereign prerogatives. At the invitation of the City Board and other parties, and with full awareness that the Settlement Plan was contingent upon an order specifying the method of financing, the district court waded into the middle of the funding issue, imposing certain costs on the State, exempting the City Board and suburban boards from any share of those costs, directing the State to provide still other funds to the City

Board for its share of the costs despite noncompliance by the Board with state law, and, finally, telling the City Board that the court would order tax increases under particular circumstances. Furthermore, the district court undertook this venture without even addressing the interests of the City and State in satisfying the order through other means more consistent with state law and policies.

The court of appeals sought to repair some of the damage, but not enough. The court, for example, made no change at all in the forced apportionment of costs between the State and City Board, an arrangement involving a local subdivision that typically is within the power of a state to control. This intrusion is made even worse, both as a practical and a legal matter, by the decision to make the State liable for a wholly disproportionate share of the relief upon the apparent theory that the State had the deeper pocket.

The court of appeals' treatment of other funding issues is similarly at sea. Although it reversed portions of the order regarding the raising of funds by the City Board, requiring some sort of showing of necessity as a precondition, the terms of the remand raise the strong possibility of a repeat performance by the district court. For all its language about "exhaustion" of other "alternatives," the Eighth Circuit's discussion reaffirms the power of the district court to implement a particular taxation formula—including the very formula in the original district court order.[2] Moreover, it ignores a general principle recognized by this Court and many others: it is simply not appropriate for a federal court to prescribe for state or local legislative bodies the details of new measures to be undertaken to fund a federal

[2] The court specifically authorized reinstatement of the order in the event that the district court finds that "no other alternatives are available or sufficient to finance its desegregation order." (Pet. App. 473).

court decree. It is at that point that the federal courts cross the line separating permissible decrees from an impermissible intrusion into the exercise of state sovereignty.

It is well-recognized, of course, that a federal court may require a state to undertake affirmative relief even though it may have substantial impact on the state treasury. *Edelman v. Jordan*, 415 U.S. 651 (1974). Given that intrusion, it adds little for the court to say that the state must get the funds, by some undefined method, to pay for the relief. But it is one thing for a court to order the state to raise funds in a manner chosen by the state, quite another for the court to select and impose the means itself. In the latter case, the court has arrogated to itself perhaps the most important legislative power that a state possesses without assuming the political accountability otherwise inherent in that power. However convenient that shift may seem for the moment, it works a fundamental and undesirable change in the allocation of responsibility between state governments and the federal courts.

This Court has never countenanced any such shift in balance. Although the Court in *Griffin v. School Board of Prince Edward County*, 377 U.S. 218 (1964), remarked that "the District Court may, if necessary to prevent further racial discrimination, require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate, and maintain without racial discrimination a public school system" in the county, *id.* at 233, it was careful to authorize court-ordered taxation only if the facts showed it to be "necessary" to remedy the constitutional violation. More significantly, the Court did not even begin to authorize an order specifying a particular form of taxation. Instead, it would have left these details to be decided by the responsible authorities. *See Plaquemines Parish School Board v. United States*, 415 F.2d 817, 833 (5th Cir. 1969) (discussing *Griffin* and reversing a decree that

went beyond *Griffin* "as to the source, manner and controls accompanying the funds" to be raised).[3]

The same distinction was recognized even more clearly in a case quite comparable to the present one—*Milliken v. Bradley*, 433 U.S. 267 (1977) (*Milliken II*). In *Milliken II*, this Court approved a complex remedial decree in a school integration case. In so doing, however, it noted that the integration decree at issue had not "abrogated" the "principles of federalism" because it did not attempt "to restructure local government entities [or] *to mandate a particular method or structure of state or local financing.*" 433 U.S. at 291 (emphasis added).

Similar restraint is evident in the rulings of other circuits. These cases make it clear, first of all, that in most circumstances, federal courts should not even address the question of state funds to effectuate decrees. As the Second Circuit has put it, "a federal district court ought not to put itself 'in the difficult position of trying to enforce a direct order . . . to raise and allocate large sums of money . . . steps traditionally left to appropriate executive and legislative bodies responsible to the voters.' " *New York State Ass'n. for Retarded Children v. Carey*, 631 F.2d 162, 165 (2d Cir. 1980) (quoting *Rhem v. Malcolm*, 507 F.2d 333, 341 (2d Cir. 1974)). Instead, it should try to "defer[] to the state officials and legislature in the hope that they will meet their constitutional [funding] obligations by whatever means necessary and desirable." *New York State Ass'n for Retarded Children v. Carey*, 596 F.2d 27, 39 (2d Cir. 1979).

---

[3] The majority below also relied on *Louisiana ex rel. Hubert v. Mayor and Council of New Orleans*, 215 U.S. 170 (1909). Yet there the tax in question had been specifically authorized by legislation, and the Court sought only to vindicate the existing statutory scheme. *Compare United States v. County of Clark*, 95 U.S. (5 Otto) 769 (1877) (barring a court order to require levying of a tax not authorized by the legislature).

But even if courts have been willing to take some steps towards requiring state or local funding of their orders, they have followed *Griffin* and *Milliken II* and drawn a second line: between a decree that mandates funding generally, and one that specifies the *details* of a new revenue-producing measure. Even if the former at some point could be justified, as a natural corollary of the power to order affirmative relief in the first place, it is "not the province of a federal court to instruct the legislature on *how* it should finance its obligations." *United States v. Board of School Commissioners*, 677 F.2d 1185, 1190 (7th Cir. 1982) (emphasis added). In school cases, for example, it has been held that a court must defer to any funding package devised by the legislature that promises to pay for court-ordered reforms—even a package that relies in part on cuts in those parts of the educational budget that are not constitutionally mandated. *Evans v. Buchanan*, 582 F.2d 750, 778-80 (3d Cir. 1978). As Judge Gibson put it in dissent below,

> The [funding] order should simply be in the form . . . to mandate that certain programs be carried out, and legislative bodies should be left with the responsibility for structuring the local or state taxing instrumentalities to achieve the result required. *The federal courts go too far in mandating specific taxing procedures.*

(Pet. App. 474) (emphasis added).

The reasoning underlying this rule is straightforward. While there may be a direct connection between the need to protect constitutional rights and the need to insist upon some assurance that funding is available, there is no corresponding link between the vindication of constitutional rights and any particular tax or funding scheme. On the contrary, in light of the dimensions of state and local programs, there will always be a variety of funding choices available, some of which will be more consistent than others with a particular state's fiscal goals and

policies. Moreover, without assuming a taxing power, the federal courts may resort to other enforcement tools to force a state to meet its constitutional obligations. *E.g., Delaware Valley Citizens' Council v. Commonwealth of Pennsylvania*, 678 F.2d 470, 476 (3d Cir. 1982) (state may be held in contempt where legislature fails to act); *New York State Ass'n for Retarded Children v. Carey*, *supra*, 631 F.2d at 165 (state has choice of remedying constitutional violations or closing facility).[4] At the very least, a federal court should explore these alternatives before supplanting legislative choice in the sensitive area of tax policy.[5]

It is thus not mere formalism to draw a line between ordering a state to raise funds to satisfy constitutional standards and actually selecting the means by which the funds must be raised. At the heart of state sovereignty is the power, and the concurrent obligation, to decide how much to tax and for what purpose. Even if the courts below were correct that the order in this case is necessary to provide plaintiffs with their constitutional rights, a proposition with which we vigorously disagree, it is still the province of the governmental bodies to elect whether to raise taxes or reduce other programs (including educational programs not essential to meet constitutional standards) and to choose what taxes to raise or what programs to cut. These principles apply with even greater force where, as here, the order is the product of a settlement agreement by which local school boards attempt to shift their own budgetary responsibilities to a nonconsenting state.[6]

---

[4] *See also Rees v. City of Watertown*, 86 U.S. (19 Wall.) 107 (1874) (proper to compel city to levy tax through writ of mandamus; improper to appoint marshal to levy tax directly).

[5] The court of appeals in this case made no mention of such avenues, apparently assuming that the district court could order specific taxes at any point at which a shortfall in funding was detected.

[6] It was particularly inappropriate for the district court to assume that funds for the decree had to be an "*increment* to the

These issues are of unusual importance. Although the court of appeals made some effort to backtrack from the district-court order, its ultimate willingness to endorse the imposition of particular taxes makes an already intolerable order even more aberrant. Review by this Court, therefore, is appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN ASHCROFT *
Attorney General
EDWARD D. ROBERTSON, JR.
Deputy Attorney General
Supreme Court Building
Jefferson City, MO 65102
(314) 751-3321

H. BARTOW FARR, III
JOEL I. KLEIN
ONEK, KLEIN & FARR
2550 M Street, N.W.
Washington, D.C. 20037
(202) 775-0184
Counsel for Respondents

* Counsel of Record

---

normal operating budget sufficient to meet desegregation needs." *Evans v. Buchanan, supra*, 582 F.2d at 779. There would be nothing constitutionally impermissible about a decision by defendants that some of the needed funds should come from cuts in areas of the school budget not covered by the substantive terms of the court's decree. *Id.* at 780.

FILED
JUL 23 1984
ALEXANDER L. STEVAS
CLERK

(7) (4) (2)

Nos. 83-1386, 83-1721 and 83-1838

In the Supreme Court of the United States

OCTOBER TERM, 1984

RONALD A. LEGGETT, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

STATE OF MISSOURI, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

CHARLES J. COOPER
Deputy Assistant Attorney General

ALBERT G. LAUBER, JR.
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

40pp

QUESTIONS PRESENTED

1. Whether in light of *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977) (*Dayton I*), and *Milliken* v. *Bradley*, 433 U.S. 267 (1977) (*Milliken II*), the court of appeals erred in requiring the State of Missouri to fund a comprehensive interdistrict desegregation remedy in the absence of district court findings sufficient to show that the remedy was "tailor[ed] * * * to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the intradistrict violation that the State had been found to have committed.

2. Whether the court of appeals placed improper restrictions on the St. Louis Board of Education's taxing prerogatives in connection with the latter's funding obligations under the desegregation plan.

3. Whether the court of appeals erred in concluding that the desegregation remedy was fair to all members of the plaintiff class.

TABLE OF CONTENTS

	Page
Opinions below	2
Jurisdiction	2
Statement	2
Discussion	19
Conclusion	35

TABLE OF AUTHORITIES

Cases:

Columbus Board of Education v. *Penick*, 443 U.S. 449 22
Dayton Board of Education v. *Brinkman*, 433 U.S. 406 ..... *passim*
General Building Contractors Ass'n v. *Pennsylvania*, 458 U.S. 375 ..... 20, 22
Hills v. *Gautreaux*, 425 U.S. 284 ..... 6, 16, 20, 22
Louisiana v. *United States*, 380 U.S. 145 20
Liddell v. *Board of Education*, 469 F. Supp. 1304, rev'd, 620 F.2d 1277, cert. denied, 449 U.S. 826 3
Liddell v. *Board of Education*, 491 F. Supp. 351, aff'd, 667 F.2d 643, cert. denied, 454 U.S. 1091 ..... 2, 4-5, 7, 32
Liddell v. *Board of Education*, 677 F.2d 626, cert. denied, 459 U.S. 877 ..... 2, 6, 7, 8, 30, 32
Milliken v. *Bradley*:
433 U.S. 267, aff'g 402 F. Supp. 1096 ..... 14, 18, 20, 25, 29
418 U.S. 717 ..... 5, 6, 16, 20, 23, 28, 30
Swann v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1 20
United States v. *Chicago Board of Education*, 567 F. Supp. 272, aff'd in part, 717 F.2d 378 32

Constitution, statute and rule:

U.S. Const. Amend. XIV (Equal Protection Clause) 29
Emergency School Aid Act, 20 U.S.C. (Supp. V) 3191 32
Fed. R. Civ. P. 23 ..... 11, 24

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 83-1386

RONALD A. LEGGETT, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

No. 83-1721

STATE OF MISSOURI, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

No. 83-1838

NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, ET AL., PETITIONERS

v.

CRATON LIDDELL, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (83-1721 Pet. App. 1a-94a) is not yet officially reported. The opinion of the district court (83-1721 Pet. App. 95a-147a) is reported at 567 F. Supp. 1037. Earlier opinions in the case are reported at 469 F. Supp. 1304 (1979), rev'd, 620 F.2d 1277, cert. denied, 449 U.S. 826 (1980); 491 F. Supp. 351 (1980), aff'd, 667 F.2d 643, cert. denied, 454 U.S. 1091 (1981); 677 F.2d 626, cert. denied, 459 U.S. 877 (1982).

JURISDICTION

The judgment of the court of appeals (83-1721 Pet. App. 148a) was entered on February 8, 1984. The petitions for a writ of certiorari were filed on February 21, 1984, April 20, 1984, and May 8, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The early history of this school desegregation case is summarized in our Briefs in Opposition in *Missouri* v. *Liddell*, cert. denied, 454 U.S. 1091 (1981) (No. 80-2152), and *Missouri* v. *Liddell*, cert. denied, 459 U.S. 877 (1982) (No. 81-2022). In order to delineate the questions presented here, that history, as well as the proceedings below, must be recapitulated in some detail.

A. The intradistrict phase of the litigation

1. This action was commenced in 1972 by a group of black parents and their children (the Liddell group) against the Board of Education of the City of St. Louis and its officials (the City Board). The complaint alleged that the City Board had maintained and perpetuated an unconstitutional dual system of public education within St. Louis. A second group of black parents (the Caldwell group), the

City of St. Louis, and the United States intervened as plaintiffs. The State of Missouri, the State Commissioner of Education, and the State Board of Education (the State parties) were joined as defendants. Following a trial, the district court held that defendants had not committed any constitutional violation. *Liddell* v. *Board of Education*, 469 F. Supp. 1304 (E.D. Mo. 1979) (Meredith, J.). It concluded that the City school system, although originally operated as part of a de jure state segregated system, had become unitary through the City Board's adoption of a "neighborhood school" policy (469 F. Supp. at 1313-1314, 1318).

The court of appeals reversed, holding that the State and the City Board had jointly maintained a segregated school system in St. Louis. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir.) (en banc), cert. denied, 449 U.S. 826 (1980). It found that the State had statutorily mandated separate schools until 1954, and that neither the State nor the City Board had taken effective steps to desegregate the City schools thereafter (620 F.2d at 1280-1281). It held that implementation of the "neighborhood school" plan had not disestablished the dual system (*id.* at 1280-1288) and that the City Board's policies since 1954 had aggravated existing segregation (*id.* at 1288-1291). The court required the City Board "to develop a system-wide plan for integrating the [City] schools," the costs of that plan to "be apportioned among the defendants as determined by the district court" (*id.* at 1295 & n.28). The court of appeals also suggested that the City Board investigate "other techniques" to remedy segregation within St. Louis, including the possibility of developing a voluntary program for "exchanging and transferring students with

the suburban school districts of St. Louis County" (*id.* at 1296).

2. On remand, the district court held that the State and the City Board were "jointly and severally liable" for segregation in the St. Louis schools. *Liddell* v. *Board of Education*, 491 F. Supp. 351, 357 (E.D. Mo. 1980) (Meredith, J.). It found that the State, "which prior to 1954 mandated school segregation, never took any effective steps to dismantle [that] dual system" (*id.* at 357). It accordingly concluded that the State parties were "primary constitutional wrongdoers who have abdicated their affirmative remedial duty" to "obliterate all vestiges of * * * state-imposed segregation" (*id.* at 359). By way of remedy, the court approved a comprehensive intradistrict desegregation plan, and ordered that the State pay half its cost (*id.* at 353, 357). The court also ordered, in paragraph 12(a) of its decree, that the City Board, the State, and the United States "make every feasible effort to work out with the appropriate school districts in the St. Louis County * * * a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis" (*id.* at 353).

The court of appeals affirmed. *Liddell* v. *Board of Education*, 667 F.2d 643 (8th Cir. 1981). It agreed with the district court's conclusion that the State parties were "primary constitutional wrongdoers" and found no abuse of discretion in the district court's ordering the State to pay half the cost of the intradistrict plan (667 F.2d at 655). It also rejected the State's challenge to paragraph 12(a) of the decree, a challenge predicated on the fact that "the suburban school districts [had not been] joined as parties" (667 F.2d at 650). The court noted that the State had

been ordered only to "make every feasible effort" to work out a voluntary interdistrict plan, that paragraph 12(a) "must be viewed as a valid part of the attempt to fashion a workable remedy within the City," and that, "[b]ecause the plan [was] to be voluntary," no question of enforcement was involved (*id.* at 651).

The State petitioned for certiorari, contending that it was not responsible for school segregation in St. Louis, that it should not have been ordered to fund any part of the intradistrict plan, and that paragraph 12(a) of the decree exceeded the district court's remedial authority (80-2152 Pet. 5, 12, 20). On the latter point, the State argued that, under *Milliken* v. *Bradley* (*Milliken I*), 418 U.S. 717 (1974), it could not be required to help develop a voluntary interdistrict plan absent the finding of an interdistrict violation (80-2152 Pet. 20-24). The United States opposed certiorari. We noted that a State may properly be ordered "to pay part of the costs of desegregation" where it has "abdicat[ed] [its] affirmative duty to disestablish the *de jure* system for which [it] bear[s] responsibility" (80-2152 Br. in Opp. 13). And we noted that, while *Milliken I* "prohibits the imposition of relief upon nonparty school districts," a court may permissibly "order those who have been found liable to make efforts to persuade those nonparty districts to cooperate voluntarily" (80-2152 Br. in Opp. 14 & n.17 (emphasis omitted)). Certiorari was denied (454 U.S. 1091 (1981)).

3. While the State's Petition in No. 80-2152 was pending, the district court (Hungate, J.) held hearings on the proposals submitted in response to paragraph 12(a) of its decree. On July 2, 1981, it approved a 12(a) plan for voluntary student exchanges between the City and the suburban school districts

(81-2022 Pet. App. A73-A108). The plan included fiscal and educational incentives designed to encourage students and suburban school districts to participate; participation was voluntary on the part of both. The district court concluded that the plan was "directly related to remedying racial segregation in St. Louis" and that it was "conducive to obtaining a proper level of constitutional compliance" by the State (*id.* at A106, A108). Fifteen suburban districts and approximately 1,200 students eventually agreed to take part in the 12(a) plan (83-1721 Pet. App. 23a, 112a). The State was ordered to pay the cost of this plan in full (81-2022 Pet. App. A102-A103).

The court of appeals affirmed. *Liddell* v. *Board of Education*, 677 F.2d 626 (8th Cir. 1982). It noted its previous holding that the State "had substantially contributed to the segregation of the public schools of the City of St. Louis" (677 F.2d at 629 (footnote omitted)). And it held that "[p]aragraph 12(a) [was] entirely enforceable against the state defendants" because they were "primary constitutional wrongdoers and, therefore, [could] be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district" (*id.* at 630 (citing *Hills* v. *Gautreaux*, 425 U.S. 284 (1976)).

The State again petitioned for certiorari, contending that it could not under *Milliken I* be required to bear the cost of the 12(a) plan absent a finding that it had committed an interdistrict violation (81-2022 Pet. 7-13). It noted that it had been found liable only for an intradistrict (city-wide) violation and that the 12(a) plan, while voluntary as to the suburban districts, was involuntary as to it. The United States

again opposed certiorari. We noted that "[t]he 12(a) plan was part of the district court's effort to remedy segregation within the City of St. Louis" and that, under *Hills* v. *Gautreaux*, *supra*, the State parties could be "required to take appropriate remedial action for the constitutional violations in which they participated" (81-2022 Br. in Opp. 8 & n.10). Certiorari was denied (459 U.S. 877 (1982)).[1]

B. The interdistrict phase of the litigation

1. While these appeals were pending, the trial court began proceedings to consider plaintiffs' charges of interdistrict violations. Although no interdistrict violations had been found, paragraph 12(c) of the original decree had, anticipatorily, ordered the City Board and the State to develop a "feasibility plan" of interdistrict relief designed "to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis *and St. Louis County*" (677 F.2d at 629 & n.2, 639; 491 F. Supp. at 353) (emphasis supplied). Paragraph 12(c), unlike paragraph 12(a), envisioned a plan in which participation by suburban school districts would be mandatory rather than voluntary, and in which county-wide, as well as city-wide, school segregation would be addressed.

---

[1] The State's Petition in No. 81-2022 also contended (Pet. 13-23) that the court of appeals had erred in upholding the district court's adoption of a plan for merging the vocational education programs of the city and county schools—referred to as "the 12(b) plan"—based on a finding that the State had violated the Constitution "by failing to merge [those] segregated * * * programs" earlier (677 F.2d at 628, 632). Certiorari was likewise denied on that issue (459 U.S. 877) and no question concerning the vocational education programs is presented here.

Pursuant to paragraph 12(c), the Caldwell plaintiffs moved to join as additional parties defendant the 23 suburban school districts in St. Louis County (83-1721 Pet. App. 138a-139a; C.A. App. 7, 93-94). The Caldwell group likewise moved to amend its complaint to allege that the State and the suburban districts had established, with segregative intent, "a racially dual system of public education in the St. Louis metropolitan area" (C.A. App. 7, 89; 83-1721 Pet. App. 139a-140a). The St. Louis metropolitan area was defined to include the City of St. Louis, St. Louis County, and two adjoining counties (83-1721 Pet. App. 140a). The City Board simultaneously moved to realign itself as plaintiff and likewise alleged interdistrict violations requiring interdistrict relief (C.A. App. 1-2, 53-85; 83-1721 Pet. App. 138a-140a). The district court (Hungate, J.) granted these motions in substantial part (C.A. App. 47-52; 83-1721 Pet. App. 138a-139a) and certified the Caldwell plaintiff class "as comprising all students, and their parents, now attending or who will attend Missouri public * * * schools located in the metropolitan St. Louis * * * area" (83-1721 Pet. App. 142a).[2]

To support their charges of interdistrict segregation, plaintiffs alleged that the State and the suburban districts, separately or in conjunction with one another, had engaged in discriminatory funding decisions, discriminatory housing and land use policies,

---

[2] Various appeals were filed from the district court's orders joining certain suburban school districts as defendants and staying proceedings against others. The Eighth Circuit in its 1982 decision held that it lacked jurisdiction of these appeals and of other interlocutory appeals filed in the interdistrict phase of the case (677 F.2d at 639, 640-641).

failures or refusals to consolidate school district boundaries, discriminatory school closings, gerrymandering of attendance areas, discriminatory pupil transportation, discriminatory faculty assignments, and discriminatory allocation of resources (83-1721 Pet. App. 139a-140a; C.A. App. 79). Defendants denied these allegations (83-1721 Pet. App. 141a). In March 1982, the district court, reversing the normal procedure, held hearings to determine what remedy it would impose in the event that it should find an interdistrict violation (C.A. App. 108-109). It declared that it would adopt a "mandatory interdistrict plan" which would dissolve the suburban districts and create a single metropolitan school district with an area-wide student transportation system (83-1721 Pet. App. 19a; C.A. App. 111-118). The court then scheduled a trial to determine whether any interdistrict violations had in fact occurred (83-1721 Pet. App. 142a).

2. No hearing on interdistrict liability took place. On the eve of trial, the original plaintiffs, the City Board, and the suburban school districts entered into an agreement "to settle the litigation involving paragraph 12(c) and the plaintiffs' interdistrict claims" (83-1721 Pet. App. 151a). The agreement was expressly made contingent on a court order establishing adequate funding (*id.* at 223a), and specified that funding should come from the State and the City Board (*id.* at 224a-226a). Neither the United States nor the State was a party to the settlement agreement.

The agreement aimed to settle plaintiffs' interdistrict claims without resort to court-ordered busing and without destroying the integrity of the 23 suburban districts (83-1721 Pet. App. 227a). It has three main components:

a. *Voluntary Interdistrict Transfers.* The interdistrict transfer plan is generally designed to encourage black students from the City to transfer voluntarily to suburban schools, and to encourage white students from the suburbs to transfer voluntarily to City schools. The transfers are to be facilitated by magnet school programs that are intended "[t]o provide broader educational opportunities to students in the metropolitan area" and "[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area" (83-1721 Pet. App. 173a). Each suburban district is generally required, over a five-year period, to increase its minority enrollment by 15%, or to 25%, whichever is less (*id.* at 159a-166a). It is expected that about 15,000 students will transfer from the City to the suburbs, and about 3,000 students from the suburbs to the City (*id.* at 23a, 153a).

b. *Quality Education Improvements.* These are designed to enhance the quality of education in all City schools, with the general objective of enabling the system to retain an AAA rating under standards set by the Missouri Department of Education (83-1721 Pet. App. 54a, 247a). The agreement mandates, among other things, a reduction in class size to a 25:1 pupil-teacher ratio (*id.* at 185a); provision of audio-visual services (*id.* at 247a); restoration of art, music, and physical education courses (*id.* at 249a); development of programs to promote computer literacy and career education (*id.* at 192a); hiring of additional school nurses, social workers, psychologists, and athletic coaches (*id.* at 250a, 262a); establishment of all-day kindergartens and pre-school centers (*id.* at 252a); expansion of services for handicapped students (*id.* at 250a); establishment of programs to improve science instruction (*id.* at 249a); and expan-

sion of the "English as a second language" program (*id.* at 260a). The quality education component of the settlement also includes special programs targeted to all-black City schools, such as a further reduction in class size (to a 20:1 pupil-teacher ratio), after-school classes, Saturday instruction, peer tutoring, summer schools, parental involvement and "role model" programs (*id.* at 197a-200a, 242a-243a).

c. *Capital Improvements.* The settlement agreement recites that "[t]he general condition of the St. Louis Public School facilities is one of rapid deterioration, extreme deferred maintenance, and general old age" (83-1721 Pet. App. 193a). It notes that in recent years "the cost of [critically needed facilities] invariably exceeded [the City Board's] funding capacities," a shortfall exacerbated by voters' repeated refusals to ratify school bond issues (*id.* at 281a-282a). The agreement accordingly mandates a program of deferred maintenance and a "comprehensive program of general renovations, associated program improvements, and modernization" of the City schools (*id.* at 283a).

3. The signatory parties—the Liddell and Caldwell plaintiffs, the suburban school district defendants, and the City Board—presented the settlement agreement to the district court for approval (83-1721 Pet. App. 103a). The court held a hearing to determine whether the agreement met the standards for approving class action settlements under Fed. R. Civ. P. 23, that is, whether the agreement was "fair, reasonable and adequate for the resolution of the 12(c) interdistrict phase" of the case (83-1721 Pet. App. 103a, 143a-144a). The court made no inquiry into the merits or substantiality of plaintiffs' allegations of interdistrict violations by the suburban districts and the State, or into the relative strength of those charges. Nor did the court inquire whether the

State's intradistrict violation had any interdistrict effects.

The district court (Hungate, J.) approved the plan without substantial modification (83-1721 Pet. App. 95a, 108a-119a) and declared that primary responsibility for funding it would rest with the State and the City Board, the "parties who ha[d] been adjudicated as liable * * * for segregated conditions within the City's public schools" (*id.* at 128a). The State was ordered to bear the full cost of implementing the interdistrict transfer plan and the magnet schools (*id.* at 96a-97a). The State was ordered to bear the full cost of implementing the quality education program outside St. Louis and half the cost of that program within St. Louis (*id.* at 96a-97a). And the State was ordered to bear half the initial costs of implementing the city-school capital improvements program, being required to match "[a]ny amount raised for capital expenditures by [the] City Board through a voter-approved bond issue at any time during 1983-1984" (*id.* at 97a, 127a). Estimates of the settlement's first-year cost ranged from $37 million to over $100 million (*id.* at 128a). The State's share for the 1984-1985 school year is estimated to be $49 million (*id.* at 87a). The suburban school districts were not required to pay anything (see *id.* at 20a).

The City, the State parties, and the United States objected to these funding provisions, contending that they exceeded the scope of the intradistrict violation shown on the record (83-1721 Pet. App. 105a, 113a). The district court rejected these arguments. It concluded that it "ha[d] the authority to order the State * * *, which has already been adjudicated a primary constitutional violator in causing school segregation in the City * * *, to fund the voluntary interdistrict transfers and [the] improvements in the quality of education * * * in order to further remedy the State

defendant's constitutional violations" (*id.* at 129a). And it concluded that it "ha[d] the authority to order the City Board, already adjudged a constitutional violator, to increase its tax rate, if necessary" to fund its share of the agreement's cost (*id.* at 129a-130a). Although the Court did not order an immediate property tax increase, it ordered the City Board to submit a new bond issue to the voters (*id.* at 97a) and enjoined a scheduled reduction in the City Board's tax rate (*id.* at 130a, 133a-134a).

4. A divided court of appeals, sitting en banc, affirmed the district court's order in substantial part (83-1721 Pet. App. 1a-94a). In the majority's view, the settlement agreement, although drafted in response to plaintiffs' allegations of interdistrict segregation by both the State and the suburban districts, also served in large measure to remedy the State's proven intradistrict violation. The court thus held that the State could be required to fund the bulk of the plan even though it was not a party to the settlement and even though it had not been found to have committed any interdistrict wrong.

a. The majority viewed the interdistrict transfer plan as "intrinsic to an effective remedy for the [State's] intradistrict violation" (83-1721 Pet. App. 25a). Because "[t]he potential for integration within [St. Louis] was limited by the fact that almost eighty percent of the students were black," interdistrict transfers, in the majority's view, were necessary to "return[] the largest number of victims to integrated schools" (*id.* at 32a, 34a). The court rejected the contention, advanced by Missouri and by the United States (*id.* at 22a), that the district court's factual findings were insufficient to support the remedy it decreed. Rather, the court of appeals concluded that the interdistrict transfer plan "was closely

tailored to the nature and scope of the violation" (*id.* at 31a), noting that "the State's presence in public education [was] immense" and that the State had previously maintained a de jure dual school system (*id.* at 32a). The court held that "the remedial limits imposed by *Dayton Bd. of Educ.* v. *Brinkman* [*Dayton I*], 433 U.S. 406 (1977), [were] inapposite to this case," reasoning that "[t]he findings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10).[3]

The court also affirmed the funding order respecting many of the agreement's quality education provisions. It noted that such programs may be "proper components of a desegregation remedy so long as they relate to the constitutional violation, are remedial in nature, and [respect] local autonomy" (83-1721 Pet. App. 46a, citing *Milliken* v. *Bradley* (*Milliken II*), 433 U.S. 267, 280-281 (1977)). The court concluded that these conditions were met in the case of programs targeted to the City's all-black schools (83-1721 Pet. App. 52a), programs 'necessary to the city schools to retain [the system's] AAA rating" (*id.* at 56a),[4] and programs involving "preschool cen-

---

[3] Besides upholding the city-to-suburbs and suburbs-to-city student transfer plan, the court of appeals agreed that the State, given its "status as a violator of the Constitution" (83-1721 Pet. App. 43a), could properly be required "to pay the full capital and operating costs of magnet schools" in St. Louis. But the court reversed as remedially unjustified the district court's order that the State pay the costs of magnet schools in the suburbs (*id.* at 44a) and of the suburb-to-suburb student transfers (*id.* at 38a-39a). The suburb-to-suburb transfer plan involved 304 students (*id.* at 24a).

[4] Such programs included library and media services, audio-visual services, reduction in class size, and restoration of art, music, and physical education programs (83-1721 Pet. App. 56a).

ters, planning and program development, all-day kindergarten, parental involvement, desegregation planning, long-range planning, and public affairs" (*ibid.*). These programs, in the court of appeals' view, were needed "to overcome the inequalities inherent in dual school systems" (*id.* at 46a) and "to enhance the appeal of the city school system, thereby promoting the chances of a stable and successful voluntary desegregation plan" (*id.* at 47a). The court held that the State could properly be required to pay half the cost of the enumerated programs, rejecting its argument that the district court had erroneously "approved funding for general education improvements * * * unrelated to desegregation" (*id.* at 50a). But the court found "[in]adequate support in the record" for the other quality education programs in the settlement agreement, concluding that they had not been shown to be "essential as remedial or compensatory" (*id.* at 56a).

Finally, the court upheld the capital-improvement aspects of the settlement. It concluded that the State "had an obligation to pay one-half of the costs of [a] program necessary to restore the city [school] facilities to a constitutionally acceptable level" (83-1721 Pet. App. 58a-59a). And it sustained the City Board's funding obligations as to the other half of the costs, while disagreeing with the district court's orders directing precisely how that money should be raised.[5]

---

[5] Specifically, the court of appeals found error in the district court's injunction against the scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings "that all other fiscal alternatives were unavailable or insufficient" (*id.* at 66a). To avoid

b. Judge Gibson concurred in part and dissented in part (83-1721 Pet. App. 73a-86a). While believing that the settlement plan was "an inspired and far reaching one" (*id.* at 86a), he concluded that the majority in two respects had "improperly require[d] the State to fund a remedy far broader than [the] constitutional violation" (*id.* at 73a). Under this Court's decisions, he noted (*id.* at 77a-78a), "a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation' " (*Hills* v. *Gautreaux*, 425 U.S. at 293-294 (quoting *Milliken I*, 418 U.S. at 744)). Although "the nature of the constitutional violation by the State of Missouri ha[d] been outlined only most generally" in the litigation thus far (83-1721 Pet. App. at 73a), that violation, Judge Gibson observed, was "at most intradistrict in nature," and there was "no hint of a finding that there was an interdistrict effect flowing from [it]" (*id.* at 79a). Because the trial court had found no interdistrict violation and had made "no findings * * * as to the extent of the remedy required" to redress the intradistrict violation, Judge Gibson concluded that the record neither demonstrated the need for a comprehensive interdistrict transfer plan nor justified imposition of its cost upon the State (*ibid.*).

Judge Gibson also dissented from the majority's holding that the State must "participat[e] in funding capital improvements" within the St. Louis school system (83-1721 Pet. App. 84a). While acknowledging that the majority had "correctly describe[d] the age, deterioration, and deferred maintenance" of the

---

"serious[] disrup[tion of] St. Louis' system of school finance," however, the court permitted the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a).

system's physical plant, he noted that there was "no finding in the district court order [that these conditions were] related in any way to the constitutional violations of either the City Board or the State" (*id.* at 83a, 84a). Indeed, "[t]here [was] nothing to suggest that the[se] condition[s] [were] other than purely and simply the result of the neglect of the City Board to fulfill its responsibilities" under local law to maintain the schools properly (*id.* at 84a). Under these circumstances, Judge Gibson concluded, "[t]o order the State to pay half of this expense is to require a remedy beyond the constitutional wrong that has been found" (*ibid.*).

c. Judge Bowman dissented (83-1721 Pet. App. 87a-94a). He agreed with Judge Gibson that the record did not support "the interdistrict aspects of the remedy" or "the requirement that the State provide funding for capital improvements" (*id.* at 87a). But he also found the record inadequate to justify compulsory State funding "for the array of costly programs" required by the settlement's quality education provisions (*ibid.*). However laudable such amenities might be "from an educational standpoint," Judge Bowman said, the district court had authority to impose them only if they were "tailored to the incremental segregative effects that have been caused by the Constitutional violation" (*id.* at 87a-88a). The record in the case, Judge Bowman concluded, gave the court of appeals "no basis for an intelligent and principled determination" as to whether the programs approved by the district court reflected "Constitutional necessity" or amounted to a mere "judicial excursion into policy-making and educational experimentation" (*id.* at 88a).

Judge Bowman emphasized that a district court under *Dayton I* must make factual findings sufficient

to show that the remedy it decrees does no more than "restore the students in the affected school district 'to the position they would have occupied in the absence of' " the constitutional violation (83-1721 Pet. App. 90a (quoting *Milliken II*, 433 U.S. at 280)). In this case, Judge Bowman observed, the desegregation plan was not "fashioned by the district court after careful findings of fact of the kind required by" *Dayton I*. Rather, it was "fashioned by agreement of the City [Board], the suburban school boards, and the plaintiffs," whereas the State, "which must bear the brunt of the costs," had not agreed to the settlement (83-1721 Pet. App. 88a-89a).

"The process by which the settlement plan came into being," Judge Bowman pointed out (83-1721 Pet. App. 92a), "underscores the need for careful fact-finding before imposing * * * its burdensome costs upon the State." He noted that the agreement was "intended to settle the broad interdistrict claims in [the] case" and that "it would be a most remarkable coincidence if a plan [so designed] was at the same time properly tailored to cure only the effects of the intradistrict violation" (*ibid.*). He stressed that "the negotiations leading to the plan largely excluded the State," that the suburban school districts "stood to reap substantial benefits" from the settlement without putting up any money, and that "[n]one of them had any real incentive to prevent the others from piling their plates high with programs and funds" at the State's expense (*ibid.*). "Such negotiations," Judge Bowman concluded, "are inherently unlikely to produce a remedy narrowly tailored to the Constitutional wrong and any present-day educational deficiencies resulting therefrom" (*ibid.*). He would thus have reversed the district court's judgment and

remanded for further factual findings (*id.* at 93a-94a).

DISCUSSION

Unlike many school desegregation remedies, which rely to a greater or lesser degree on mandatory busing and other coercive measures, the plan approved by the district court here seeks to accomplish desegregation by creating incentives for voluntary integrative student transfers. The plan was developed in a spirit of reasonableness and compromise. The negotiations that produced it were free of the racial animus that often hobbles desegregation efforts. In these respects, the plan in Judge Gibson's words is indeed "an inspired and far reaching one" (83-1721 Pet. App. 86a). As a forward-looking attempt to accomplish stable and lasting desegregation—a result that has often eluded programs placing greater reliance on coercive techniques—the plan has much to commend it.

It is thus with considerable reluctance that we must note error in the decision below. The court of appeals, in our view, has exceeded the proper limits of federal judicial power by allocating in an inequitable manner the costs of remedying racial segregation in the St. Louis metropolitan area. In so doing, it worked a serious injustice against the State. The State of Missouri, without its consent, has been ordered to bear the cost of a comprehensive interdistrict remedy whose scope—based on the record before the court of appeals—cannot possibly be called "commensurate to the * * * violation[]" (*Dayton I*, 433 U.S. at 417) that the State was found to have committed. The court of appeals erred in approving that remedy, and its error is due chiefly to misapprehension of the principles laid down by this Court in *Dayton I*.

1. "The controlling principle consistently expounded" in this Court's school desegregation decisions "is that the scope of the remedy is determined by the nature and extent of the constitutional violation" (*Milliken I*, 418 U.S. at 744, citing *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 16 (1971)). Accord, *Hills* v. *Gautreaux*, 425 U.S. at 293-294. Thus, while a federal court has the "duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future" (*Louisiana* v. *United States*, 380 U.S. 145, 154 (1965)), judicial remedial powers may "be exercised only on the basis of a violation of the law and [may] extend no further than required by the nature and the extent of that violation" (*General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 399 (1982)). The Court has repeatedly emphasized that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). In other words, "it must always be shown that the constitutional violation caused the condition for which remedial programs are mandated" (*id.* at 286 n.17).

In *Dayton I*, this Court clarified the responsibilities of the lower courts to demonstrate, through careful findings of fact, that their remedial decrees comport with these limitations on federal equity power. The Court "granted certiorari to consider the propriety of [a] court-ordered [school desegregation] remedy in light of the constitutional violation which [had been] found by the courts below" (433 U.S. at 409 (citation omitted)). The court of appeals had imposed a comprehensive systemwide remedy based on the district court's finding of "isolated but repeated

instances of failure by the [City] School Board to [bring about] an integrated school system" (*id.* at 410 (original quotation marks omitted)).

This Court held that the district court's findings gave the court of appeals "no warrant * * * for imposing the systemwide remedy which it apparently did" (433 U.S. at 417), a remedy that was "entirely out of proportion to the constitutional violations found by the District Court" (*id.* at 418). This Court emphasized that the relationship between remedy and wrong in desegregation cases "must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles" (*id.* at 410). "Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature and extent of the constitutional violation" (*id.* at 420 (original quotation marks omitted)). The responsibility for making the necessary factual findings rests with "[t]he District Court[] in the first instance" (*id.* at 419). The Court acknowledged that it "is a difficult task * * * to make the complex factual determinations" needed to tailor a proper remedy in school desegregation cases, but concluded that such fact-finding was precisely "what the Constitution and our cases call for" (*id.* at 420). The Court held that "the disparity between the evidence of constitutional violations and the sweeping remedy finally decreed requires supplementation of the record and additional findings addressed specifically to the scope of the remedy" (*id.* at 419).

The court of appeals below concluded that "the remedial limits imposed by [*Dayton I*] are inapposite to this case," reasoning—with apparent reference to the statutorily-mandated dual school system prevalent in St. Louis until 1954—that "[t]he find-

ings of *de jure* segregation which distinguish this case were absent" in *Dayton I* (83-1721 Pet. App. 32a n.10). Although the full import of the court of appeals' statement is not entirely clear, the statement is incorrect as it stands. It may well be, of course, that a district court, in the case of a long-entrenched dual school system, will not find it easy to conduct the factual investigation that *Dayton I* contemplated, *i.e.*, to "determine how much incremental segregative effect" the violation has had on the racial distribution of the school population (433 U.S. at 420).[6] The "incremental segregative effect" formula, however, was simply an application to the facts of *Dayton I* of general remedial principles enunciated by the Court earlier and reaffirmed in that case. In this sense, "the remedial limits imposed by [*Dayton I*]" (83-1721 Pet. App. 32a n.10) are not confined to cases of isolated violations, or even to cases of school desegregation generally, but are "fundamental limitations on the remedial powers of the federal courts" (*General Building Contractors*, 458 U.S. at 399 (quoting *Hills* v. *Gautreaux*, 425 U.S. at 293)). This Court reaffirmed the applicability of those limitations to cases of officially-maintained dual school systems in *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 456-457 & n.5, 465-466 (1979), noting that *Dayton I* had "reiterated the accepted rule that the remedy imposed by a court of equity should be commensurate with the violation ascertained" (443 U.S. at 465). Although the extent of the violation shown on the record in *Dayton I* differs from that here, the *principles* of *Dayton I*—particularly its requirement

---

[6] The record before this Court in *Dayton I* revealed only isolated instances of segregative activity. See 433 U.S. at 410 and pages 20-21, *supra*.

that desegregation remedies be predicated on careful and detailed findings of fact—are fully applicable in this case.

2. We agree with the dissenters below that the district court failed to make the kind of factual findings required by *Dayton I*, and that the court of appeals, in the absence of such findings, erred in approving against the State the remedy that it did. The only constitutional violation the State has been found to have committed is an intradistrict violation—the failure to dismantle the dual school system in the City of St. Louis. In earlier stages of the litigation (see pages 4-6, *supra*), the State was ordered to right that wrong by funding half the cost of a systemwide plan (involving mandatory intradistrict transfers and remedial education programs) and by funding the full cost of the 12(a) plan (involving voluntary interdistrict transfers and additional remedial programs). The district court found that these measures were "directly related to remedying racial segregation in St. Louis" and were "conducive to obtaining a proper level of constitutional compliance" by the State (81-2022 Pet. App. A106, A108).

The remedy involved here, by contrast, was decreed in the interdistrict phase of the case, and was designed to settle plaintiffs' charges of interdistrict violations, not only by the State, but also by the 23 suburban districts. Since the State did not consent to that settlement, funding responsibilities could be imposed upon it only if its liability was first determined. The district court, however, made no finding that the State had committed any interdistrict violation, or that the State's intradistrict violation had any interdistrict effects (see *Milliken I*, 418 U.S. at 745). It made no finding as to the relative strength

of plaintiffs' charges against the suburban districts and the State. And it made no finding that there existed any other circumstances warranting imposition on the State of remedial costs beyond those it had already been ordered to bear in the intradistrict phase of the suit. The district court, in short, made no findings that could enable it to "tailor 'the scope of the remedy' to fit 'the nature and extent' " (*Dayton I*, 433 U.S. at 420) of the State's intradistrict violation, the only constitutional violation the State had been found liable for. The "scope of the remedy," rather, was dictated by other parties to the lawsuit, who alleged (or faced allegations of) interdistrict wrongdoing, in a settlement to which the State did not consent, and in circumstances that created no incentives at all to "tailoring" the remedy against the State.

Besides failing to make the necessary findings, the district court did not even conduct the type of proceeding that would have afforded the State a realistic chance to be heard concerning the remedial costs that it could properly be forced to bear. The only hearing the district court held in this respect was a hearing to determine whether the settlement met the standards for approving class action settlements under Fed. R. Civ. P. 23, and this hearing focused almost exclusively on the settlement's fairness to the plaintiff class (see 83-1721 Pet. App. 108a-119a). Although the State was permitted to voice objections to the funding obligations proposed to be placed upon it (*id.* at 113a), the hearing was not designed to permit a defense against plaintiffs' charges of interdistrict wrongdoing. And the State was given no opportunity to build a record concerning the extent of its intradistrict constitutional violation, the effects flowing from that violation, or the magnitude of the cost that

it could reasonably be expected to bear in order to correct its wrong.[7]

The court of appeals attempted to salvage the settlement by paring away some of its more extravagant growth. But while that court could offer its conclusions that there was "adequate support in the record" for some provisions (*e.g.*, 83-1721 Pet. App. 54a, 55a) and that "the record [did not] sufficiently support[]" others (*e.g.*, *id.* at 44a, 56a), those conclusions are no substitute for careful findings of fact by "[t]he District Court[] in the first instance" (*Dayton I*, 433 U.S. at 419). This Court emphasized in *Dayton I* that an appellate court is not at liberty to fill by intuition the gaps in a record; it may set aside "the findings of the district court [as] clearly erroneous" or it "may accept that court's findings of fact but reverse its judgment because of legal errors"

---

[7] The district court sought to rationalize its order that the State fund the settlement by asserting that "[t]he sole purpose for the expenditure of funds * * * is to carry out the constitutional responsibility to remove the vestiges of a segregated school system," and that "[i]n no way should any funding provisions * * * be construed to authorize expenditures unrelated to the City Board's desegregation obligations under the Constitution" (83-1721 Pet. App. 128a-129a). But these unsupported conclusions do not amount to the "complex factual determinations" mandated by *Dayton I* as a predicate for such sweeping relief (see 433 U.S. at 420), and a comparison with the record before the Court in *Milliken II* highlights this inadequacy. The district court there had made extensive and elaborate findings to demonstrate that each component of the desegregation plan was "essential for a school district undergoing desegregation" (402 F. Supp. 1096, 1118 (E.D. Mich. 1975), aff'd 540 F.2d 229 (6th Cir. 1976), aff'd 433 U.S. 267 (1977)), and this Court said that the record compelled it "to conclude that the decree before [it] was aptly tailored to remedy the consequences of the constitutional violation" (433 U.S. at 287).

(433 U.S. at 417-418). Here, as in *Dayton I*, "the Court of Appeals did neither" (*id.* at 418).[8]

3. Because it lacked the factual findings called for by *Dayton I*, the court of appeals erred in approving as a remedy against the State, and in ordering the State substantially to fund, each of the three major components of the settlement agreement—the interdistrict transfer plan, the quality education provisions, and the capital improvements program:

a. The court of appeals concluded that the interdistrict transfer plan "was closely tailored to the nature and scope" of the intradistrict violation that the State had earlier been found to have committed (83-1721 Pet. App. 31a). It based this conclusion, not upon its review of facts in the record or of any findings by the district court based on that record, but upon the propositions that "the State's presence in public education is immense" and that the State had failed to dismantle the dual school system in St. Louis (*id.* at 32a). This was not the sort of remedial review procedure that *Dayton I* prescribes.

Aside from the absence of trial court findings, the circumstances under which the interdistrict plan was developed should have suggested to the court of appeals that the plan was not in fact "closely tailored to the nature and scope" of the State's intradistrict violation. That plan was intended to settle plaintiffs' interdistrict claims, and, as Judge Bowman aptly said, "it would be a most remarkable coincidence if a plan [so] intended * * * was at the same time prop-

---

[8] This case, like *Dayton I*, may be "every bit as important for the issues it raises as to the proper allocation of functions between the district courts and the courts of appeals within the federal judicial system" (433 U.S. at 409) as it is for the substantive remedial questions it presents.

erly tailored to cure only the effects of the intradistrict violation" previously found (83-1721 Pet. App. 92a). The plaintiff class was defined by reference to the St. Louis metropolitan area (*id.* at 142a), and the agreement recites that the purpose of including magnet schools was "[t]o increase the desegregation of the schools in the [St. Louis] Metropolitan area" (*id.* at 173a). The settlement plan, finally, was negotiated by the 23 suburban school districts who were the State's co-defendants and who, like the State, had been charged with intradistrict and interdistrict violations. The settlement they negotiated virtually absolved them of liability while requiring them to pay nothing. These circumstances again should have suggested to the court of appeals that the financial burden of the interdistrict transfer plan was not "closely tailored" to remedy a violation *by the State*, much less to remedy the *intradistrict* violation that the State had previously been found to have committed.

For these reasons, the court of appeals had no basis in the record for ordering the State to fund any part of the interdistrict transfer plan, beyond the limited part of the plan that merely subsumed the remedial obligations imposed on the State in earlier stages of the litigation. The district court had found that the remedial measures previously imposed were "conducive to obtaining a proper level of constitutional compliance" by the State (81-2022 Pet. App. A106). In the absence of proof that the State had committed an interdistrict violation, that its proven intradistrict violation had interdistrict effects, or that the previously-ordered remedial measures were demonstrably inadequate, the court of appeals lacked authority to require the State to fund a settlement designed to achieve desegregation throughout the St.

Louis metropolitan area. See *Milliken I*, 418 U.S. at 745.

b. The absence of adequate factual findings likewise infects the court of appeals' funding order respecting the quality education provisions. The court attempted somewhat to streamline this part of the settlement by reference to whether or not it found "adequate support in the record" for particular items (83-1721 Pet. App. 54a-56a). But "[b]ecause of the lack of appropriate inquiry and fact-finding below, there [was] no jurisprudentially acceptable way" for the court of appeals to determine which of these items were necessary to remedy the State's constitutional violation, and which were not (*id.* at 88a n.1 (Bowman, J., dissenting)).[9]

Faced with the absence of factual findings, the court decided to approve "those programs necessary to permit the city schools to regain, and then retain, their Class AAA status" (*id.* at 54a, 56a). But "a school classification device * * * developed by the State's Department of Education" (*id.* at 91a (Bowman, J., dissenting)) has no constitutional dimension. "Thousands of Missouri school children, over one-quarter of the total number, attend schools that lack Class AAA status" (*ibid.*). The district court made no finding that the St. Louis schools' loss of

---

[9] The court of appeals, for example, upheld funding for preschool centers, improved music instruction, audio-visual services, and a "parental involvement" program (83-1721 Pet. App. 56a). But it apparently rejected funding for after-school tutoring, improved science instruction, computer literacy services, and a "student leadership" program (compare 83-1721 Pet. App. 56a with *id.* at 192a, 249a, 253a, 258a). The court did not explain why the former were "closely tailored" to remedy the State's constitutional violation, whereas the latter were not.

AAA rating was attributable to a constitutional violation by the State, or that those schools would have maintained their AAA rating in the absence of the intradistrict violation previously found. As this Court has repeatedly held, federal court decrees "exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation" (*Milliken II*, 433 U.S. at 282). And the causal link between the violation and the condition sought to be remedied must be based, not on surmise, but on "the kind of factfinding by the district court and review by [the court of appeals] that *Dayton* mandates" (83-1721 Pet. App. 92a (Bowman, J., dissenting)).

c. The absence of adequate findings, finally, seriously infects the court of appeals' funding order respecting the capital improvements program. The settlement agreement did recite that the city schools were "in a severely deteriorated and sometimes dilapidated physical condition" (83-1721 Pet. App. 195a). But the district court did not find that this condition was attributable to a violation of the Equal Protection Clause, much less to a violation committed by the State. Indeed, the settlement agreement recites that the capital improvements were needed "to ensure a learning environment which complements and supports the instructional program in a manner which optimizes the learning process" (*id.* at 195a). In their interdistrict complaints, of course, plaintiffs alleged that the city schools' deterioration was caused in part by "discriminatory funding decisions" and by "discriminatory allocation of resources" (C.A. App. 79). But these allegations were never tried. The facts developed in a trial might show that black and white schools in St. Louis are equally dilapidated, and that this generalized condition is attributable to

voters' refusal to approve school bond issues (see 83-1721 Pet. App. 83a, 281-282a) or to the City Board's neglect of its "responsibility for maintenance of the schools' physical plant" under local law (*id.* at 83a (Gibson, J., concurring in part and dissenting in part)). In ordering the State to fund half the capital improvements in the absence of factual findings linking that remedy to the State's wrong, the court of appeals again ignored the mandate of *Dayton I*.

4. At certain points in its petition (83-1721 Pet. 11, 17, 22-23), the State apparently seeks to deduce from *Milliken I* a per se rule that a defendant can never be required to pay for desegregation relief employing interdistrict remedial techniques, even if participation in that remedial program is voluntary on the part of all others involved, unless such defendant is shown to have committed an interdistrict violation, or an intradistrict violation with interdistrict effects. This is essentially the contention that the State previously made (81-2022 Pet. 7-13) when seeking review of the order requiring it to fund the 12(a) voluntary interdistrict plan (see 677 F.2d at 630 and pages 4-7, *supra*), and certiorari on that question was denied (459 U.S. 877 (1982)).

We have already expressed our disagreement with that contention (81-2022 Br. in Opp. 8 & n.10). In our view, *Milliken I* establishes no such per se rule. To be sure, once a court under *Milliken I* tailors a desegregation remedy to cure the intradistrict violation, and ascertains the cost of that remedy, that cost sets the limit of the defendant's financial liability for that violation. Consistently with *Milliken I* and *Dayton I*, however, an intradistrict violator can be ordered to fund a remedy incorporating interdistrict remedial techniques, provided (1) that participation in that program is voluntary on the part of all others

concerned, and (2) that the aggregate cost assessed against the intradistrict violator is "narrowly tailored" to—*i.e.*, does not exceed the amount appropriate to redress—the intradistrict violation shown. The error here, as discussed above (see pages 23-30, *supra*), was that the courts below made no effort thus to tailor the remedy assessed against the State.

5. The question presented is by no means unimportant. Although the choice of remedy in a school desegregation case involves factual complexities, the court of appeals' error—its failure to recognize the import of *Dayton I*, and its consequent failure to remand for the kind of factfinding *Dayton I* requires—is neither complicated to state nor difficult to correct. The Court has granted certiorari before to consider the fit between remedy and wrong in school desegregation cases, and the court of appeals' opinion suggests to us the appropriateness of revisiting that area now.

It is of course true that the question presented boils down to a question of who shall bear the cost. That question, however, is not a trifling one for the State, which will be required by the decision below to divert several hundred million dollars "from taxpayers or other competing programs (including other needy school districts) to the beneficiaries of this plan" (83-1721 Pet. App. 88a (Bowman, J., dissenting)). Our experience, both in this case and in other recent desegregation cases, suggests that racial hostility is gradually—and fortunately—diminishing as an obstacle to agreement, leaving allocation of a cost as a major, if not the most important, issue. And the allocation of costs inevitably affects the size and shape of the remedy itself, for litigants like the suburban districts here will have little hesitation in assenting to desirable programs, however unnecessary to re-

dress a prior constitutional violation, if they are not required to pay for them.

The question presented is also of importance to the United States. The St. Louis desegregation plan—particularly its reliance on voluntary measures—is in many respects a model that we would encourage others to follow, and we wish it to be a model of fairness to all concerned. While the United States is not directly affected in a monetary sense by the decisions below, the potential effect of those decisions therefore does concern us.[10]

Despite the importance of the question presented, we have some doubt whether the case warrants plenary review. If the Court agrees with us that further proceedings and factual findings are required in this case, the Court may wish to grant the State's petition (at least as to the first question presented therein),[11]

---

[10] The court of appeals earlier rejected plaintiffs' contentions that the United States, although nominally an amicus curiae and later a plaintiff-intervenor, had "contributed to the segregation of the St. Louis school district" and should be required "to pay a substantial portion of the cost of integrating [it]" (667 F.2d at 647, 653-654). Although no relief was decreed directly against the United States, the government did provide "a substantial portion of the funding" for desegregation in St. Louis (see 677 F.2d at 654) through the Emergency School Aid Act, 20 U.S.C. (Supp. V) 3191, for the 1980-1981 and 1981-1982 school years. And while the United States has vigorously resisted contentions that its housing and education programs should render it liable for segregation in the schools, the depth of the government's pockets make it a tempting target for litigants and courts seeking to solve intractable problems by agreeing that each shall get everything he wants and that someone else shall pay the bill. See *United States* v. *Chicago Board of Education*, 567 F. Supp. 272 (N.D. Ill.), aff'd in part, 717 F.2d 378 (7th Cir. 1983).

[11] We believe that the second and third questions presented in the State's petition, to the extent that they raise issues not

summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I*. We believe that such disposition would not endanger the prospects for a prompt and fair settlement of this litigation, and we share Judge Bowman's hope that the parties would "resume their negotiations and achieve a settlement agreement to which all could assent" (83-1721 Pet. App. 94a). Alternatively, if the Court believes that the questions presented can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

6. None of the questions presented in the other two petitions merits this Court's review. The City of St. Louis, petitioner in No. 83-1386, contends that the decision below places improper restrictions on the City Board's taxing prerogatives in connection with the latter's funding obligations under the desegregation decree. Although the district court's original funding order was problematic in this respect, we think that the court of appeals fully cured the problem. It held that the district court had erred in enjoining a scheduled property tax reduction (83-1721 Pet. App. 65a-66a) and ruled that future orders affecting the City Board's tax rate should be entered only if accompanied by factual findings demonstrating their necessity (*id.* at 66a). To prevent disruption of the school system's finances, the court of appeals, in the exercise of its equitable discretion, did allow the injunction to remain in place for the balance of the 1983-1984 school year (*id.* at 60a). But the question whether that discretion was properly exercised

---

previously considered by the Court in the State's earlier petitions for certiorari (see 80-2152 Pet. i, 81-2022 Pet. i, and pages 30-31, *supra*), are fairly comprised within the first question presented here.

does not merit this Court's review, particularly since the 1983-1984 school year is now over. Petitioners' challenges to the district court's authority to issue future orders affecting the City Board's tax rate (83-1386 Pet. 19-21) are premature.

The North St. Louis Parents, petitioners in No. 83-1838, are an association of black parents whose children attend public schools in North St. Louis. Their motion to intervene in the proceedings below was denied (83-1838 Pet. 3), but they filed written objections to the proposed settlement in the district court (*ibid.*). They contend that their objections were ignored (*id.* at 3-4). The district court noted that it had considered numerous oral presentations (83-1721 Pet. App. 113a-114a) and 42 written presentations (*id.* at 114a) from various individuals and groups supporting and opposing the settlement. It noted that it had "considered all statements presented by members of the public" and had concluded that "[t]he amount and type of opposition * * * [was] not overwhelming in the light of the scope and notoriety of this lawsuit" (*id.* at 114a, 115a). There is no reason to believe that the district court failed to consider petitioners' written comments.

CONCLUSION

The petitions in Nos. 83-1386 and 83-1838 should be denied. If the Court agrees with us that further proceedings and factual findings are required in this case, it may wish to grant the petition in No. 83-1721 (at least as to the first question presented therein, see pages 32-33 note 11, *supra*), summarily vacate the decision below, and remand for further proceedings consistent with *Dayton I*. Alternatively, if the Court believes that the case can be treated adequately only upon full briefing and oral argument, we would not oppose that course.

Respectfully submitted.

REX E. LEE
Solicitor General

WM. BRADFORD REYNOLDS
Assistant Attorney General

CHARLES J. COOPER
Deputy Assistant Attorney General

ALBERT G. LAUBER, JR.
Assistant to the Solicitor General

JULY 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 421823 10016

Nos. 83-1386, 83-1721 and 83-1838

FILED
AUG 2 1984
ALEXANDER L. STEVAS,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1983

RONALD A. LEGGETT, *et al.*,
STATE OF MISSOURI, *et al.*,
and
NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, *et al.*,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

THOMAS I. ATKINS
NAACP
186 Remsen St.
Brooklyn, New York 11201
(212) 858-0800

WILLIAM L. TAYLOR
CENTER FOR NATIONAL POLICY REVIEW
Catholic University Law School
Law School Bldg., N.E.
Washington, D.C. 20064
(202) 832-8525

MICHAEL J. HOARE
CHACKES & HOARE
314 N. Broadway, Suite 1010
St. Louis, Missouri 63102
(314) 241-7961
Attorneys for Caldwell Plaintiffs

WILLIAM P. RUSSELL
408 Olive Street, Suite 715
St. Louis, Missouri 63102
(314) 621-4525
Attorney for Liddell Plaintiffs

JOHN H. LASHLY
PAUL B. RAVA
KENNETH C. BROSTRON
LASHLY, CARUTHERS, BAER & HAMEL
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2938

DAVID S. TATEL
ALLEN R. SNYDER *
ELLIOT M. MINCBERG
SUE A. KAPLAN
HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500
Attorneys for the Board of Education of the City of St. Louis, Missouri

JOHN GIANOULAKIS
KOHN, SHANDS, ELBERT, GIANOULAKIS & GILJUM
411 North Seventh Street
St. Louis, Missouri 63101
(314) 241-3963
Attorneys for Ritenour and Pattonville School Districts

* Counsel of Record

[Additional attorneys listed on inside cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

DONALD J. STOHR
JAMES W. ERWIN
THOMPSON & MITCHELL
One Mercantile Center
Suite 3400
St. Louis, Missouri 63101
(314) 231-7676
Attorneys for Parkway School District

HENRY D. MENGHINI
ROBERT J. KREHBIEL
EVANS & DIXON
314 North Broadway, 16th Floor
St. Louis, Missouri 63102
(314) 621-7755
Attorneys for Affton and Lindbergh School Districts

ROBERT P. BAINE, JR.
BAINE & EDWARDS
225 South Meramec Avenue
St. Louis, Missouri 63105
(314) 862-5900
Attorneys for Hazelwood School District

BERTRAM W. TREMAYNE, JR.
TREMAYNE, LAY, CARR & BAUER
120 South Central, Suite 540
St. Louis, Missouri 63105
(314) 863-4151
Attorneys for Kirkwood and University City School Districts

EDWARD E. MURPHY, JR.
GARRY SELTZER
MURPHY & ASSOCIATES, P.C.
120 South Central, Suite 938
St. Louis, Missouri 63105
(314) 725-5440
Attorneys for Riverview Gardens School District

ROBERT G. MCCLINTOCK
705 Olive Street, Room 722
St. Louis, Missouri 63101
(314) 241-5673
Attorney for Ladue School District

GEORGE J. BUDE
ZIERCHER, HOCKER, HUMAN, MICHENFELDER & JONES
130 South Bemiston, Suite 405
St. Louis, Missouri 63105
(314) 727-5822
Attorneys for Hancock Place, Brentwood, Clayton, and Jennings School Districts

DAROLD E. CROTZER, JR.
STEINBERG & CROTZER
230 South Bemiston, Suite 1010
St. Louis, Missouri 63105
(314) 727-9400
Attorneys for Normandy School District

RICHARD H. ULRICH
SHIFRIN, TREIMAN, BARKEN, DEMPSEY & ULRICH
11 South Meramec, Suite 1350
St. Louis, Missouri 63105
(314) 862-3232
Attorneys for Maplewood-Richmond Heights School District

ALBERT M. SCHLUETER
KENNETH V. BYRNE
SCHLUETER & BYRNE
11 South Meramec, Suite 1400
St. Louis, Missouri 63105
(314) 727-0777
Attorneys for Valley Park School District

FRANK SUSMAN
NORMAN C. PARKER
SUSMAN, SCHERMER, RIMMEL & PARKER
7711 Carondelet, 10th Floor
St. Louis, Missouri 63105
(314) 725-7300
Attorneys for Ferguson-Florissant School District

BRUCE S. FELDACKER, P.C.
705 Olive Street, Suite 500
St. Louis, Missouri 63101
(314) 231-2970
Attorney for St. Louis Teachers Union, Local 420, American Federation of Teachers

QUESTIONS PRESENTED

1. Whether a court order pursuant to *Hills v. Gautreaux*, 425 U.S. 284 (1976), requiring the State to fund voluntary interdistrict transfers between the City and consenting suburban districts in order to help remedy the *de jure* segregated school system which the State has been found guilty of creating and helping to maintain in the City, presents an issue warranting review, particularly where the Court of Appeals has twice approved similar orders calling for the funding of such voluntary transfers and this Court has twice denied certiorari.

2. Whether a court order requiring the funding of compensatory education and other remedies in order to help eliminate the vestiges of a *de jure* segregated school system, based upon a detailed review of the particular facts in the record of this case and pursuant to this Court's decision in *Milliken v. Bradley*, 433 U.S. 267 (1977), presents an issue warranting review.

3. Whether an appellate court ruling which holds that a district court order deferring a tax rate decrease must be dissolved unless further proceedings demonstrate that such a deferral is the only way to fund a remedy for a constitutional violation presents an issue warranting review simply because the Court of Appeals continued the deferral in effect as an interim measure for the duration of the 1983-84 school year, in accord with this Court's prior decisions concerning interim remedies.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	15
REASONS FOR DENYING THE WRIT	17
CONCLUSION	30

TABLE OF AUTHORITIES

CASES Page

Adams v. United States, 620 F.2d 1277 (8th Cir.) (*en banc*), *cert. denied*, 449 U.S. 826 (1980) 3, 4, 5, 19, 30
Allen v. State Board of Elections, 393 U.S. 544 (1969) 26
Arthur v. Nyquist, 712 F.2d 809 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3756 (1984) 22
Berry v. School District of Benton Harbor, 698 F.2d 813 (6th Cir.), *cert. denied*, 104 S. Ct. 236 (1983) 22
Black v. Cutter Laboratories, 351 U.S. 292 (1956) .. 24
Brennan v. Armstrong, 433 U.S. 672 (1977) 23
Brown v. Board of Education, 347 U.S. 483 (1954) 30
Columbus Board of Education v. Penick, 443 U.S. 449 (1979) 22, 23, 24
Cooper v. Aaron, 358 U.S. 1 (1958) 30
Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977) 23, 26
Dayton Board of Education v. Brinkman, 443 U.S. 526 (1979) 23, 24
Elrod v. Burns, 427 U.S. 347 (1976) 25
Evans v. Buchanan, 582 F.2d 750 (3d Cir. 1978) (*en banc*), *cert. denied*, 446 U.S. 923 (1980) 22, 27
Federal Communications Commission v. Pacifica Foundation, 438 U.S. 726 (1978) 24
Ford Motor Co. v. United States, 405 U.S. 562 (1972) 22
Graham v. Folsom, 200 U.S. 248 (1906) 25
Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964) 16, 24, 25, 27
Hills v. Gautreaux, 425 U.S. 284 (1976) ..... i, 7, 16, 18
In Re General Motors Corp. Engine Interchange Litigation, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979) 28
Keyes v. School District No. 1, 413 U.S. 189 (1973) 19
Lemon v. Kurtzman, 411 U.S. 192 (1973) 26

TABLE OF AUTHORITIES—Continued

Page

Liddell v. Board of Education, 491 F.Supp. 351 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981) 5, 6
Liddell v. Board of Education, 677 F.2d 626 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982) 7, 9, 21, 28
Liddell v. State of Missouri, 717 F.2d 1180 (8th Cir. 1983) 27
Mahan v. Howell, 410 U.S. 315 (1973) 26
Milliken v. Bradley, 418 U.S. 717 (1974) 7, 15, 18
Milliken v. Bradley, 433 U.S. 267 (1977) ..... *passim*
Monell v. New York City Department of Social Services, 436 U.S. 658 (1978) 25
Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) 26
Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969) 27
San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 23
Supervisors v. Durant, 76 U.S. 415 (1869) 25
Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) 19, 22
United States v. City of Miami, 664 F.2d 435 (5th Cir. 1981) (*en banc*) 21
United States v. Jefferson County Board of Education, 380 F.2d 385 (5th Cir.), *cert. denied*, 389 U.S. 840 (1967) 23
United States v. Texas, 447 F.2d 441 (5th Cir. 1971), *cert. denied*, 404 U.S. 1016 (1972) 23
United States v. Texas Education Agency, 679 F.2d 1104 (5th Cir. 1982) 22
United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 25
Upham v. Seamon, 456 U.S. 37 (1982) 26
Virginia v. West Virginia, 246 U.S. 565 (1918) 25
Von Hoffman v. City of Quincy, 71 U.S. 535 (1867) 25
Watson v. City of Memphis, 373 U.S. 526 (1963) 29
Welsch v. Likens, 550 F.2d 1122 (8th Cir. 1977) 29

TABLE OF AUTHORITIES—Continued

Page

Yaris v. Special School District, 558 F. Supp. 545 (E.D. Mo. 1983), *aff'd*, No. 83-1865 (8th Cir. Feb. 24, 1984) 30

OTHER AUTHORITIES

Fed. R. Civ. P. 23(e) 9

Missouri Constitution

Article VI § 26(b) 12
Article IX § 1(a) 18
Article X § 11(c) 4, 12

Missouri Revised Statutes

§ 164.011 4
§ 164.013 12

Sup. Ct. R. 17.1(a) 17
Sup. Ct. R. 17.1(c) 17
St. Louis Post Dispatch, Sept. 14, 1983 p. 1 30

Supreme Court of the United States

OCTOBER TERM, 1983

Nos. 83-1386, 83-1721 and 83-1838

RONALD A. LEGGETT, *et al.*,
STATE OF MISSOURI, *et al.*,

and

NORTH ST. LOUIS PARENTS AND CITIZENS FOR QUALITY EDUCATION, *et al.*,
Petitioners,

v.

CRATON LIDDELL, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

Petitioners, the City of St. Louis and certain City officials (hereinafter "City"), the State of Missouri and certain State officials (hereinafter "State"), and the North St. Louis Parents and Citizens for Quality Education and certain members of that association (hereinafter "Association"), have asked this Court to grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit *en banc*, entered on February 8, 1984. The City and State Petitioners challenge the provisions for financing a settlement agreement entered into by black plaintiffs as class representatives, the Board of Education of the City of St. Louis, and all twenty-three St. Louis County school districts. The agreement was approved by the District Court on July 5, 1983. Acting on the basis of existing findings of liability against the State of Missouri and the City Board, the District Court also entered an order to fund the agreement. The Dis-

trict Court's order was approved with modifications by the Court of Appeals.[1] The voluntary desegregation plan embodied in the agreement has been operating successfully since September, 1983.

On three previous occasions, this Court has denied requests to review earlier decisions in this case raising most of the same issues which Petitioners present here. Because the decision below is correct and does not raise any questions warranting review by this Court, Respondents Craton Liddell, *et al.* (hereinafter "Liddell Respondents"), Respondents Earline Caldwell, *et al.* (hereinafter "Caldwell Respondents"), Respondents Board of Education of the City of St. Louis, Missouri, its members, officers, and administrators (hereinafter "City Board"), the St. Louis County school district Respondents listed herein, and Respondent St. Louis Teachers Union urge this Court to deny the pending petitions.

STATEMENT OF THE CASE

The "Statement of the Case" set forth in the State's petition implies that the courts below imposed on an innocent state government the obligation to fund a massive, mandatory cross-district busing order for the purpose of ensuring a better racial balance in a unitary school system. The City's petition further suggests that the courts below ordered a tax increase to help finance the plan.

In fact, however, the State is not innocent, the City schools are not unitary, the desegregation plan is not

---

[1] The Eighth Circuit's opinion is reported at 731 F.2d 1294 and is reprinted in Appendix ("City App.") K to the Petition for a Writ of Certiorari filed by the City ("City Pet.") and in Appendix ("State App.") A to the Petition for a Writ of Certiorari filed by the State ("State Pet."). The decision of the District Court which was reviewed by the Eighth Circuit is reported at 567 F. Supp. 1037 and is reprinted in City App. A and in State App. B. A supplemental order issued by the Eighth Circuit on March 5, 1984 is reported at 731 F.2d 1336 and is reprinted in Appendix B to the Supplemental Brief of the City.

mandatory, and no tax increase was ordered. What in fact happened below was that the State—which had been found liable after trial, along with the City Board, for creating, maintaining, and failing to dismantle a *de jure* racially dual school system in the City of St. Louis whose vestiges remain unliquidated today—was ordered to help fund a voluntary desegregation plan worked out between the City Board and all 23 surrounding St. Louis County school districts. The plan gives black students attending the remaining unconstitutionally segregated schools in the City a choice between volunteering to attend majority white schools in county districts or schools in the City that are free to the maximum extent practical from the vestiges of past discrimination. No child will be forced to be "bused" anywhere. Contrary to the impression left by the City, neither the Court of Appeals nor the District Court ordered the City Board or any other entity to increase the tax rate previously approved by the voters. Instead, both courts specifically held that no court-ordered tax increase would be proper unless and until it is proven essential to remedy unconstitutional segregation and its vestiges. These facts, along with the other relevant facts in this case, are set forth in more detail below.

The Establishment of State and City Board Liability for School Segregation in St. Louis

In 1980, the Eighth Circuit held that the State and the City Board had failed to discharge their constitutional duty to eliminate the vestiges of the pre-1954 *de jure* racially dual school system in the City of St. Louis. The court found that, as a consequence of the constitutional violation, 77% of the City schools remained more than 90% one-race. *Adams v. United States*, 620 F.2d 1277, 1285 (8th Cir.) (*en banc*), *cert. denied*, 449 U.S. 826 (1980). The court's ruling was based upon an extensive record compiled during lengthy litigation in the District Court, including over 7,000 pages of transcript and some 1,200 exhibits. Both the City Board and the

City of St. Louis, as well as the State, participated as parties in that trial. *Id.* at 1283 n.5.[2] The 23 St. Louis County school districts were not parties at that time. This Court denied a petition for a writ of certiorari. *Adams v. United States*, 449 U.S. 826 (1980).

The Court of Appeals' 1980 opinion specifically held that the State played a significant role in the creation and maintenance of segregation within the City of St. Louis. "Separate schools were maintained by the St. Louis Board of Education pursuant to [state] legislation and the state constitution." *Id.*, 620 F.2d at 1280. A series of state laws and constitutional provisions had created the "state-mandated segregated system," and a number of these provisions remained on the books after 1954, some as late as 1976. *Id.* at 1281, 1280. In addition, the court noted that "discriminatory restrictions against blacks were enforced by the courts and agencies of the State of Missouri" prior to 1954, which "intensified racial segregation" in St. Louis. *Id.* at 1291 n.21. The court held that after 1954, the State failed to take "prompt and effective steps" to dismantle the dual system, and the St. Louis City schools remained segregated. City App. K at p. A-408c.

The Eighth Circuit's 1980 opinion ordered the District Court to implement a "system-wide" remedy for the "system-wide" constitutional violation, including mandatory student reassignments. *Adams v. United States*,

---

[2] Prior to trial, the State was added as a defendant and the City was permitted to intervene as a separate party. Under Missouri law, respondent City Board is an independent, elected public body which has its own taxing authority and sets its own tax rate for school purposes, subject to numerous restrictions imposed by State law. *See* Mo. Rev. Stat. § 164.011; Mo. Const. art. X, § 11(c). Although the City of St. Louis shares boundaries, taxpayers, and constituents with the City Board, it is a separate political entity from the City Board and is separate both geographically and politically from St. Louis County. Once the City Board sets its tax rate, the City's role is limited to the ministerial function of collecting taxes on behalf of, and distributing revenues to, the City Board.

supra, 620 F.2d at 1291, 1295. The Court of Appeals recognized, however, that any feasible remedy limited to mandatory reassignment could not effectively desegregate the schools and remove the vestiges of the dual system. *Id.* at 1296. The court found that a so-called "racial balance" plan, which would have required virtually every St. Louis City school to mirror the racial composition of the system as a whole, was impractical in light of the District Court's finding that its probable result "would be an all-black school system in a few years." *Id.* at 1295. *Accord*, City App. K at p. A-416-417. At the same time, the court noted that under any of the available alternatives, some black St. Louis students would remain in one-race schools. *Id.* at 1296. The appellate court accordingly directed the trial judge to consider the use of other remedial techniques to provide relief to black St. Louis students, including the implementation of compensatory and remedial educational programs pursuant to *Milliken v. Bradley*, 433 U.S. 267 (1977) (*"Milliken II"*), and voluntary student exchanges with suburban school districts. *Adams v. United States*, *supra*, 620 F.2d at 1296-97.

The District Court's 1980 Findings and Order

On remand, the District Court conducted additional hearings, made supplemental findings, and issued a desegregation order based on a plan developed by the City Board effective for the 1980-81 school year. *Liddell v. Board of Education*, 491 F. Supp. 351 (E.D. Mo. 1980), *aff'd*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981). Again, the State participated fully in these hearings. Among its other findings, the District Court specifically held that the State had previously "mandated school segregation," that it "never took any effective steps to dismantle the dual system it had compelled by constitution, statutory law, practice and policy," and that it was a "primary constitutional wrongdoer" with respect to the "segregated conditions in the St. Louis public

schools." *Id.* at 357, 359, 360.[3] The court accordingly ordered the State defendants and the City Board, which had been found to be "jointly and severally liable," each to pay part of the costs of the desegregation plan. *Id.* at 352-53, 357, 359.

In addition to some mandatory reassignment of pupils, the 1980 desegregation plan included magnet schools, improvements in the overall quality of education in the City schools, and the implementation of remedial and compensatory programs for students remaining in primarily one-race schools. *Id.* at 357. Pursuant to the Court of Appeals' mandate to consider techniques for providing additional relief to students remaining in segregated schools, the District Court's order also called for the development of a "voluntary, cooperative plan of pupil exchanges" between the City school district and the surrounding St. Louis County districts. *Id.* at 353 (paragraph 12(a)). The Eighth Circuit affirmed the District Court's order in all respects, and this Court denied certiorari. 454 U.S. 1081 (1981).

The Interdistrict Claims and the Further Implementation of the 1980 Order

In January, 1981, the Caldwell Respondents and the City Board filed motions to add suburban districts to the litigation and to bring claims for interdistrict remedies, and similar pleadings were subsequently filed by the Liddell Respondents. These claims contended that the county districts, in conjunction with the State, had created and perpetuated a racially dual, metropolitan-wide structure of public education justifying the implementation of a mandatory metropolitan desegregation remedy. *See* City App. A, p. A-42-44. These allegations were denied by the defendants.

---

[3] Despite these findings by the District Court and the 1980 holding of the Court of Appeals, the State continues to rely in this Court upon the earlier findings in the District Court's 1979 decision, which found neither the State nor the City Board liable for school segregation in St. Louis, even though that decision was *reversed* by the Court of Appeals. *See, e.g.*, State Pet. at 29 n.28.

While these interdistrict claims were pending, the District Court ordered further implementation of the relief it outlined in 1980 in order to continue the process of dismantling the vestiges of the racially dual school system remaining in the City of St. Louis. *See Liddell v. Board of Education*, 677 F.2d 626, 628 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982) ("*Liddell V*") (noting that "30,000 black students still attend all-black schools" in St. Louis). This included an order that the State defendants pay transportation and related costs of a voluntary interdistrict transfer plan that had been developed pursuant to paragraph 12(a) of the 1980 order, under which black City students and white county students from districts which chose to take part could participate in voluntary interdistrict transfers. The State defendants protested, claiming that the order violated *Milliken v. Bradley*, 418 U.S. 717 (1974) ("*Milliken I*"), and that sufficient findings of State liability had not been made. As in 1981, the Eighth Circuit rejected these arguments on the basis of the established liability of the State defendants for segregation within the City and on the authority of *Hills v. Gautreaux*, 425 U.S. 284 (1976). *Liddell V*, 677 F.2d at 630.[4] As in 1981, this Court denied certiorari. 459 U.S. 877 (1982).

The Settlement Agreement

Shortly before trial of the interdistrict claims in February, 1983, the parties announced that, with the as-

---

[4] The Court of Appeals also held that the established liability of the State defendants and the City Board permitted the District Court to require them to take additional steps to "help eradicate the remaining vestiges of the government-imposed school segregation in city schools, including actions which may involve the voluntary participation of the suburban schools." *Id.* at 641. The court noted that such steps could include, for example, additional financial incentives for county districts to participate in voluntary interdistrict programs, more magnet schools to attract county students, and improvements in the quality of education in the remaining all-black City schools. *Id.* at 641-642. All of the foregoing elements were included in the Settlement Agreement approved below.

sistance of a court-appointed special master, an Agreement in Principle had been reached to settle the interdistrict claims against the 23 St. Louis County districts.[5] A proposed Settlement Agreement was filed on March 30, 1983, and was accepted by the three groups of plaintiffs in the interdistrict phase of the case—the City Board, Liddell and Caldwell Respondents—and by all 23 St. Louis County school districts.[6]

The Settlement Agreement is designed to provide further relief for black students attending one-race schools in the City of St. Louis. It contains desegregation measures that build upon the paragraph 12(a) voluntary interdistrict transfer plan and the 1980 desegregation order.[7] It also implements some specific steps which the Eighth Circuit suggested in its 1982 opinion were justified in view of the established liability of the State and

---

[5] The City asserts that it was "excluded" from the settlement negotiations. City Pet. at 3. There is no support in the record, however, for this claim, and the City never raised it below. Nor is there any indication that the court-appointed special master, under whose auspices the negotiations took place, would have rejected a request by the City to participate actively. In fact, several months before the case was settled, the City sought unsuccessfully to withdraw altogether from the case. *See* Order of December 29, 1982 [H(1870)82]; City App. A at p. A-10-11. The State also participated actively in the settlement negotiations, although it ultimately decided not to sign the Settlement Agreement. *See* Transcript of Fairness Hearing of May 13, 1983 at 6 (statement of Assistant Attorney General Marshall) (stating that State defendants' "input was of some assistance" in negotiations).

[6] At the time the Settlement Agreement was filed, St. Louis County also informed the District Court that, assuming the Agreement was acceptable to the county school districts, the county had "no objection that the Settlement Agreement as drafted be implemented according to its terms." *See* Position of St. Louis County Government Defendants Regarding Settlement Agreement [H(2239)83] (filed April 4, 1983) at 2. The county has now contradicted its previous position in its brief filed with this Court supporting the City's petition for a writ of certiorari.

[7] At the time of the Settlement Agreement, 15 of the 23 St. Louis County school districts were participating in the paragraph 12(a) voluntary plan.

the City Board. *Liddell V*, 677 F.2d at 641-42; *see* note 4, *supra*.

Contrary to the State's implication that the agreement required or "called for busing more than 15,000 students," State Pet. at 5, the agreement is completely voluntary and no student is required to participate. It is designed to give all black students attending one-race schools in the City a choice between transferring to predominantly white schools in the county districts or attending schools in the City in which the vestiges of segregation have been removed to the maximum extent practical by *Milliken II*-type ancillary relief. Like the paragraph 12(a) plan, the agreement provides for voluntary interdistrict transfers between City and county schools. Each county district which receives enough transfers within five years to satisfy specified desegregation goals will obtain a final judgment. To attract suburban students to the City, and to provide additional relief for black City students, the agreement creates additional magnet schools and general improvements in the quality of education in the City schools, similar to those contained in the 1980 desegregation order. As in the 1980 order, the agreement also provides for special educational improvements for black City students remaining in one-race schools. *See* City App. K, p. A-410.

The District Court's Order

The Settlement Agreement was conditional upon court approval pursuant to Fed. R. Civ. P. 23(e), and upon a court order requiring the parties previously found liable—the State and the City Board—to finance the plan in order to provide further desegregation relief. *See* Settlement Agreement [H(2217)83] at X (A), (B) (3), City App. C at p. A-125, 127. Beginning on April 28, 1983, the District Court conducted a five-day hearing concerning the fairness, reasonableness, and adequacy of the Settlement Agreement. This hearing also considered the extent to which the State and the City Board could be ordered to fund the Settlement Agreement on the basis of

their proven liability for intradistrict segregation. Extensive evidence was presented at the hearing concerning the importance of the compensatory and remedial educational programs and other components of the plan to the achievement of successful desegregation.[8] In addition to oral testimony, the court received 42 written statements from interested persons, proposed findings from the parties, and public statements from community leaders and groups. These included favorable statements concerning the plan issued by the presidents of St. Louis colleges and universities, numerous area religious leaders, both United States Senators from Missouri, and a number of education and civic groups.[9] The State and the City presented evidence seeking to attack the proposed financing of the plan and claiming that the relief to be ordered against

---

[8] *See, e.g.*, Transcript of April 28, 1983 Fairness Hearing ("April 28 Tr.") at 1-40 (testimony of Dr. James DeClue); *id.* at 1-70-80, 83-85 (testimony of Dr. Robert Dentler); *id.* at 1-135-140 (testimony of Dr. Jerome Jones); May 13 Tr. at 44-46, 54 (testimony of Dr. Evelyn Luckey). Dr. Dentler testified that the plan would have been "flawed beyond hope" without such compensatory and remedial educational programs. April 28 Tr. at 80. The State itself agreed that two specific programs, the "early childhood program" and the "instructional management system," had been "advocated" by its own Department of Elementary and Secondary Education and "should rightfully be part of this quality education package." May 13 Tr. at 9 (statement of Assistant Attorney General Marshall). In addition, the District Court had previously received testimony concerning the importance of such programs during earlier phases of the case, including from witnesses proffered by the State defendants. *See, e.g.*, Transcript of March 1, 1982 12(c) hearing ("March 1 12(c) Tr.") at 23-24, 40-41 (testimony of former St. Louis School Supt. Robert Wentz); *id.* at 113 and March 3 12(c) Tr. at 145 (testimony of Dr. Gordon Foster); March 2 12(c) Tr. at 18-19 (testimony of Dr. Robert Dentler); *id.* at 160, 172-173 (testimony of Dr. Albert Walker, witness for the State); March 24 12(c) Tr. at 52 (testimony of Dr. Herbert J. Walberg, witness for the State); *id.* at 128-129 (testimony of Dr. Gary Orfield).

[9] *See* Joint Response of City Board, Caldwell and Liddell Plaintiffs to Comments from the Public [H(2281)83] (filed April 11, 1983) at 2-4 and App. A-G; April 28 Tr. at 1-37-38; May 13 Tr. at 60-61; H(2539)83 (filed July 27, 1983).

the State was not warranted by the liability proven.[10] In addition, the Association presented written and oral objections concerning the adequacy of the plan's compensatory and remedial educational provisions and the allegedly disparate impact of the plan on some class members.[11]

In its order of July 5, 1983, the District Court approved the Settlement Agreement for implementation beginning in September, 1983. On the basis of the prior finding of intradistrict liability, the court also ordered the State defendants and the City Board to finance the plan, explicitly stating that the "sole purpose for the expenditure of funds under this Plan is to carry out the constitutional responsibility to remove the vestiges of [the] segregated school system" in the City of St. Louis which they had created and perpetuated, and that "all proposed expenditures must be justified on this basis." City App. A, p. A-33. The July 5 order provided that the State defendants would be responsible for the costs of voluntary interdistrict transfers, magnet schools, and certain part-time and alternative integrative programs, plus one-half the cost of the compensatory and remedial programs in the City schools and capital improvements pursuant to the plan. *See* City App. A, p. A-2-3.

In its July 5 order, the District Court held that the City Board was required to fund the other half of the costs of the compensatory and remedial programs and capital improvement components of the plan. *Id.* Evidence was presented that the City Board would be unable both to maintain its regular educational programs and to comply with its desegregation responsibilities unless additional revenues were made available.[12] The court

---

[10] *See, e.g.*, May 13 Tr. at 8-9 (statement of Assistant Attorney General Marshall); *id.* at 94-95 (testimony of George Otte, witness for the City); May 16 Tr. at 165 (testimony of Otis Baker, witness for the State).

[11] *See* April 29 Tr. at 3-20-31.

[12] *See* April 28 Tr. at 140-141, 144-145, 147 (testimony of St. Louis School Supt. Jones). State law severely limits the City

thus ordered the City Board to defer a reduction in its operating tax levy which had been scheduled as a result of the passage of Proposition C (Mo. Rev. Stat. § 164.013) insofar as necessary to meet the City Board's desegregation obligations. *See* City App. A, p. A-4. The court's order thus maintained—not increased—the existing tax rate in the City. The court indicated it would consider an appropriate order to rai e additional revenue, but only if proven necessary. *See* City App. A, p. A-35.

The Court of Appeals' Opinion

In an *en banc* decision, the Eighth Circuit affirmed the District Court's July 5 Order with substantial modifications. Based upon the previous findings of liability and its earlier decisions, the appellate court upheld the District Court's ruling that the State defendants and the City Board could be ordered to fund the plan to desegregate further the City schools. *See* City App. K, p. A-407-408. The Eighth Circuit approved the July 5 Order with respect to voluntary interdistrict transfers between the City and the county districts, magnet schools in the City, compensatory and remedial educational programs for one-race schools, and the extension of such programs to the target City schools which became integrated as a result of the 1980 order insofar as necessary to achieve the quality of educational programs required for successful desegregation.

The court declined to approve the District Court's order that the State defendants fund magnet schools in county districts or transfers between one county district and another. It also declined to approve the District Court's order that compensatory and remedial educational

---

Board's ability to raise revenues. It requires approval by two-thirds of the City's voters for the issuance of bonds or any tax increase significantly above the current level. *See* Mo. Const. art. VI, § 26(b); art. X, § 11(c). Indeed, as recently as June 5, 1984, a majority of City voters approved a proposed tax rate increase and bond issue to help fund the desegregation plan, but these proposals failed because they did not receive the two-thirds vote required under State law.

programs be extended to the target City schools which became integrated as a result of the 1980 order where the record did not adequately support the need for such programs to remedy the existing constitutional violation. The appellate court thus effectively eliminated all or part of 13 such programs.[13] Finally, the court held that, although evidence had been presented concerning the need for additional City Board revenues to finance the plan, the lower court had not made a specific factual finding that there were no adequate fiscal alternatives to deferring the property tax reduction. Accordingly, the Eighth Circuit ordered that the reduction take effect in 1984-85 unless such findings are made. City App. K at p. A-455.

Recognizing that its opinion would require modification of the agreement and a reduction in the cost of the plan, the Eighth Circuit required the parties to decide promptly if they wished to continue to participate in the agreement. *See* City App. K, p. A-408a. All parties did agree to continue with the plan. *See* Order of March 28, 1984 [H(3000)84]. Despite the claims of the State and the City (*see, e.g.*, City Pet. at 19, State Pet. at 2), the fiscal year 1984 cost of the plan, even if the compensatory and remedial components and other programs approved by the District Court were implemented in full, was budgeted for $33.4 million. The City Board has

---

[13] *Id.* at p. A-407-408, 443-445; City Board's Status Report on its Compliance with the Eighth Circuit's Instructions Pertaining to Quality Education Programs Under Settlement Plan and Request for Reductions in State Payments for 1983-84 [H(3022)84] (filed April 2, 1984) at 4, 6, Attachment 3. Examples of programs which were cut or eliminated for targeted integrated schools include: curriculum supervision; lowering of certain pupil/teacher ratios; and provision of additional counselors for integrated elementary schools. *Id.* In addition, the Court of Appeals imposed cost and related limitations on new part-time integrative programs, the total number of interdistrict transfers, compensatory programs in all-black schools, and capital improvements. The court also required review of proposed future expenditures by a five-person budget committee on which the State is to have two representatives. *See* City App. K, p. A-434, 442-443, 446-447, 458.

recently estimated that the cost will actually be less than $27.4 million, of which less than $18.7 million is to be paid by the State.[14] The State itself has recently stated in the court below that based upon the Court of Appeals' opinion, its "settlement plan budget for fiscal year 1984 should be on the order of $10.5 million." [15]

Experience Under the Settlement Agreement

While these court proceedings have been pending, the 1983-84 school year began in the City of St. Louis and in St. Louis County. As the Court of Appeals noted, 2,294 black students from the City have been voluntarily

---

[14] *See* Amended Settlement Plan Budget of City Board [H(2878)84] (filed Feb. 1, 1984) at 3-4; City Board's Status Report on its Compliance with the Eighth Circuit's Instructions Pertaining to Quality Education Programs under Settlement Plan and Request for Reduction in State Payments for 1983-84 [H(3022)84] (filed April 2, 1984) at 7, Attachments 1, 2, and 4. The Budget Review Committee recently has recommended (over the City Board's objection) that the State's share be further reduced to approximately $10.9 million. Budget Review Committee Report on Disputes Concerning 1983-84 Settlement Plan Funding Obligation [H(3150)84] (filed June 13, 1984) at 9. The City Board's estimate and the Budget Review Committee's recommendation do not include costs associated with interdistrict transfers. Those costs will depend upon the precise number of transfer students. Prior to the Court of Appeals' opinion limiting such transfers, the costs were estimated by the signatories to the plan to be about $7.2 million. *See* Settlement Plan Summary of Costs (filed with Eighth Circuit Court of Appeals on September 28, 1983). Although no final 1984-85 budget has yet been determined, costs will be somewhat higher next year, in part because one-time start-up and renovation expenditures will be required then for certain magnet school and other programs. *See* Order of July 12, 1984 [H(3220)84]. Such costs are subject to the budget control procedure established below. Hearings on the 1984-85 budget were underway at the time of the filing of this Brief. *See* note 13, *supra*.

[15] State Appellants' Response to Caldwell Plaintiffs' Motion for Attorneys' Fees and Costs (8th Cir., filed April 30, 1984) at 5. *See also* Second Quarterly Progress Report on the Settlement Plan—Financial Advisor's Report [H(3071)84] (April 23, 1984) ("Second Quarterly Report") at 6 (court-appointed financial advisor reporting that "[a]ll data indicate that even recent revised budget appropriations will be underspent this year").

attending predominantly white schools in the county under the plan.[16] Another 389 white county students have voluntarily transferred to City schools. *See* City App. K, p. A-414. An additional 4,167 students have applied for City to county transfers for the 1984-1985 school year, and another 466 students have applied for county to City transfers for the same year. *See* Letters from the Executive Director of the Voluntary Inter-district Coordinating Council [H(3256)84] (dated July 18, 1984) and [H(3289)84] (dated July 25, 1984).[17] The Council which helps operate the plan, has reported to the District Court that the program shows every sign of success. "From both the students' as well as the receiving districts' perspectives, indications are that student adjustment has been excellent, programs are being coordinated to meet student needs, and that both student and staff attitudes are positive and receptive." Letter from Executive Director of the Voluntary Inter-district Coordinating Council [H(2729)83] (dated October 7, 1983). Desegregated education is now becoming a reality for the children of the City of St. Louis.

SUMMARY OF ARGUMENT

The primary arguments raised by Petitioners simply restate claims raised unsuccessfully by the State on prior occasions in this Court and the courts below, claims which this Court has repeatedly declined to review. Contary to the assertion of the City and State Petitioners, the decision below does not impose a mandatory metropolitan remedy in violation of *Milliken v. Bradley*, 418 U.S. 717 (1974) ("*Milliken I*"). The only mandatory relief ordered was to require the State and the City Board,

---

[16] The 15,000 transfer figure contained in the State's Petition at 5 refers to the total number of transfers projected to be reached by the fifth year of the plan.

[17] Early experience under the Settlement Agreement demonstrates that the percentage of white students in the City school system is increasing, reversing a long downward trend. *See* Seventh Report of the City Board [H(2760)83] (filed October 31, 1983) at 40.

both adjudicated constitutional violators in connection with system-wide segregation in the City of St. Louis, to provide financing for further desegregation relief for City students, in cooperation with county districts which have voluntarily agreed to participate pursuant to the Settlement Agreement. This is fully consistent with *Milliken I* and *Hills v. Gautreaux*, 425 U.S. 284 (1976), because only parties found liable have been compelled to participate, and because the remedy ordered by the District Court is intended to alleviate the remaining vestiges of the dual system in the City of St. Louis for which the State defendants and the City Board have been found responsible. It is also consistent with *Milliken v. Bradley*, 433 U.S. 267 (1977) (*"Milliken II"*), because the Court of Appeals specifically found that the remedies it approved were tailored to the nature and scope of the proven violation: the confinement of black students to inferior quality one-race City schools. The Court of Appeals has properly applied the relevant legal principles to the particular facts in St. Louis.

In addition, the City's petition claims repeatedly that the courts below have somehow engaged in improper judicial levying of taxes to finance the further desegregation relief ordered in St. Louis. This allegation reflects a fundamental misinterpretation of applicable law and of the decisions below. Neither the Court of Appeals nor the District Court ordered the City Board or any other entity to raise its tax rate. Instead, both courts specifically held, pursuant to *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), that no court-ordered increase would be proper unless and until it is proven essential to remedy unconstitutional segregation and its vestiges. While the District Court had ordered the deferral of a scheduled property tax reduction based on evidence that continuation of the present tax rate was necessary to help finance desegregation, the Court of Appeals held that this order must be dissolved unless the District Court makes further explicit findings that such funding is absolutely necessary for effective desegrega-

tion and that no alternative source of funding exists. The Court of Appeals properly allowed the order to remain in force through the end of the 1983-84 school year as an interim measure in order to avoid disruption in mid-year, as this Court has done in numerous school desegregation and other cases.

Petitioners have thus failed to show that the decision of the Eighth Circuit in this case conflicts with any decision of another Court of Appeals or of this Court. *See* Supreme Court Rule 17.1(a), (c). On the contrary, the court's opinion reflects the application of established principles of law to the particular facts of this case, and does not present any issues of general applicability worthy of review by this Court.

REASONS FOR DENYING THE WRIT

1. Both the City and the State claim that the decision below "implemented a metropolitan remedy, based on findings that proven violations affected only a single school district." City Pet. at 19. *Accord*, State Pet. at i. This claim echoes the virtually identical arguments unsuccessfully raised by the State in prior arguments to this Court and the courts below. *See* p. 7, *supra*.[18] It also reflects a fundamental misunderstanding of the District Court's order.

Relief was ordered below only against the State and the City Board. Both remain obligated to dismantle the dual system in the City of St. Louis for which they have been found liable. Precisely as with the earlier voluntary

[18] *See* State's Petition for a Writ of Certiorari in No. 80-7152 (filed June 17, 1981) at 20 (claiming that the "District Court exceeded its authority in ordering the preparation of a plan of voluntary exchanges between the St. Louis School District and nonparty school districts" based on "an intradistrict violation"); State's Petition for a Writ of Certiorari in No. 81-2022 (filed April 30, 1982) at 7 (claiming that lower courts approved "an inter-district remedy without first finding an inter-district violation"). *See also* City App. K at p. A-417-419 (discussing previous unsuccessful State attempts in this Court and the Court of Appeals to attack orders requiring State to fund voluntary interdistrict transfers).

interdistrict 12(a) plan, which the State attacked unsuccessfully in the Court of Appeals and in this Court, the District Court ordered the State and the City Board to help finance and implement a voluntary plan involving the cooperation of suburban districts in order to further remedy school segregation in the City. Indeed, the District Court's order was essentially an expanded version of the previous voluntary plan. Contrary to Petitioners' suggestions, the District Court expressly stated that it was ordering this relief for the "sole purpose" of fulfilling the "constitutional responsibility to remove the vestiges of a segregated school system." City App. A, p. A-33.

As the District Court and the Court of Appeals recognized, this Court's decisions in *Milliken I* and *Hills v. Gautreaux*, *supra*, fully support this order. Unlike *Milliken I*, no relief was ordered against suburban jurisdictions that have not been found liable. *See Milliken I* at 721-722. Instead, as in *Gautreaux*, constitutional violators were required to implement a plan extending beyond the boundaries of a city in order to help relieve segregation found to have been caused by them within the city. *Id.*, 425 U.S. at 297-300 (affirming order requiring Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") to implement a plan which extended beyond the City of Chicago, but which did not require suburbs to participate, in order to help remedy housing segregation caused by HUD and CHA within the city). As in *Gautreaux*, the fact that the wrong committed by the State was within the city does not prevent the courts from ordering relief involving the voluntary cooperation of suburban districts.[19]

---

[19] The State's attempt to distinguish *Gautreaux* is unconvincing. HUD and CHA were both found liable for segregated housing violations within the Chicago city limits, just as the State of Missouri and the City Board were found liable for segregated schools within the City of St. Louis. Just as HUD had authority to act beyond the geographical limits of the City of Chicago, the State of Missouri has state-wide responsibility for establishing and maintaining public schools throughout the State. Mo. Const. art. IX § 1(a). Just

The State nevertheless argues that the relief ordered below is improper. Without citing anything in the record, the State asserts that the "numerous . . . one-race schools" in the City of St. Louis may be the result of "a racial distribution caused by personal choices regarding housing or employment or other factors not attributable to proven unconstitutional conduct by the State." State Pet. at 20. This claim is nothing more than a warmed-over version of defendants' previous argument, which was specifically rejected by the Court of Appeals in 1980, that school segregation in the City of St. Louis was caused by factors over which defendants "had no control," such as "discriminatory private policies" and "general population movements unrelated to any specific governmental policies." *Adams v. United States*, *supra*, 620 F.2d at 1291. Both the Court of Appeals and the District Court found in 1980 that the remaining segregation and one-race schools in the City of St. Louis were a vestige of the *de jure* segregated system and other unconstitutional conduct of the State and the City Board. This Court denied certiorari. *See* City App. K at p. A-408c-408d; p. 3-6, *supra*.[20] The State's attempt to re-

---

as it was appropriate for HUD to be ordered to construct public housing outside the Chicago city limits with the consent of suburban governmental entities in order to help remedy segregated conditions in the city for which HUD was liable, it is appropriate in this case to require the State of Missouri to fund voluntary interdistrict transfers outside the City of St. Louis with the consent of St. Louis County school districts in order to help remedy segregated conditions in the City for which the State is liable.

[20] These rulings are consistent with this Court's decision in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 18, 26 (1971) ("*Swann*"), where this Court held that the existence of one-race schools establishes a "*prima facie* case of violation of substantive constitutional rights." and that defendants have the burden to establish that such schools are "not the result of present or past discriminatory action." The State's speculation in its petition concerning other possible causes of one-race schools in St. Louis clearly fails to satisfy its burden under *Swann*. *See also Keyes v. School District No. 1*, 413 U.S. 189, 207-213 (1973) (explaining the burden on defendants of justifying the existence of remaining one-race schools).

litigate in this Court this settled factual question does not raise an issue worthy of review.

2. The City, State, and the United States also maintain, as the State has previously argued to this Court, that the remedies ordered below, particularly the compensatory and remedial programs for City schools ordered pursuant to *Milliken II*, exceeded the scope of the constitutional violation proven. Petitioners and the United States have misread the decision below and the relevant case law.

As this Court has explained, a desegregation remedy "does not 'exceed' the violation" where it is "tailored to cure the '*condition* that offends the Constitution' "—in this case, the vestiges of *de jure* system-wide school segregation in the City of St. Louis. *Milliken II*, 433 U.S. at 282 (emphasis in original). The Court of Appeals acknowledged and adhered to this principle. It reviewed applicable legal precedents regarding the need for such components in order to overcome "the inequalities inherent in dual school systems," beginning with this Court's holding in *Milliken II*. City App. K, p. A-436, 437-38. Based on the extensive evidence presented to the District Court (*see* p. 9-11, *supra*), the Court of Appeals then proceeded to analyze carefully each aspect of the relief ordered. *See* City App. K, p. A-420-448. The appellate court approved only those components which the record demonstrated were necessary to correct the vestiges of the former dual system, namely the remaining one-race, inferior schools in the City. The order below gives each of the 30,000 students attending those schools the choice of attending a magnet school, a regular City school improved by *Milliken II* programs, or an integrated school in a county school district. *See* City App. K, p. A-445, A-460. The Court of Appeals reversed the District Court as to all programs which did not meet this exacting standard, such as student transfers between county districts, county magnet schools, and all or part of 13 components of the compensatory and remedial portion of the plan. *Id.* at A-407; *see* p. 12-13 *supra*. This procedure

conforms precisely to the standards established by this Court. Petitioners and the United States offer no basis for asking this Court to review the Court of Appeals' detailed application of the *Milliken II* standards to the facts of this case.

Contrary to the State's assertion, it is no "curious accident" that the Court of Appeals found that the programs included in the Settlement Agreement as modified (as distinguished from the broader remedies sought in the interdistrict complaints), were tailored to remedy the remaining vestiges of the constitutional violation. *See* State Pet. at 26. *See also* Brief for the United States at 23. The parties who negotiated the settlement were keenly aware that they were drafting a plan that had to be sufficiently tailored to the existing intradistrict liability findings to warrant a court order requiring their funding and implementation. For this reason, they drafted the compensatory and remedial education provisions in accordance with similar provisions in the 1980 order. *See* p. 8, *supra*. The parties also expressly relied upon the 1982 Court of Appeals opinion suggesting the types of additional desegregation relief that could be ordered against the State and the City Board based upon the existing record. *See Liddell V*, 677 F.2d at 641-642, cited at Settlement Agreement [H(2217)83] at X (B)(3), City App. C at p. A-127. Contrary to the argument presented by Petitioners and by the United States, it is thus clear that the remedy has been carefully tailored to the existing intradistrict violation.[21]

---

[21] The State further asserts, relying on *United States v. City of Miami*, 664 F.2d 435 (5th Cir. 1981) (*en banc*), that since it is not a consenting party to the Settlement Agreement, the Court may not "approve ramming a settlement" down its throat. State Pet. at 15 n.13. The decision in *City of Miami*, however, is irrelevant to this case. There the court declined to approve that portion of a settlement agreement that affected the rights of a non-consenting third party. In *City of Miami*, unlike this case, there was never any finding of liability on the part of the third party. In contrast, the court here properly ordered the State to fund the Settlement Agreement based on the established findings of State liability for the unconstitutional conditions that the order seeks to remedy.

Petitioners' cramped view of the appropriate nature of desegregation remedies squarely contradicts this Court's prior holdings. This Court has charged state and local authorities with the responsibility to take "whatever steps might be necessary" to eliminate "all vestiges of state-imposed segregation" from the schools. *Swann*, 402 U.S. at 15; *accord*, *Columbus Board of Education v. Penick*, 443 U.S. 449, 459 (1979) ("*Columbus*"). When such authorities fail to do so, the courts are not limited—as Petitioners assert—to a fanciful and futile effort to try to recreate "things as they would have been." State Pet. at 19. *See also* City Pet. at 22. As this Court has explained, it is not possible simply "to turn back the clock." *Ford Motor Co. v. United States*, 405 U.S. 562, 573 n.8 (1972). Instead, so long as the objective is to "cure the condition that offends the Constitution," the "scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Milliken II*, 433 U.S. at 281, 282 (approving remedial reading and other compensatory programs despite argument that "the court's decree must be limited to" student reassignments since "the constitutional violation found" was "the segregation of students on the basis of race").[22] Following the example of this Court's decision in *Milliken II* and numerous other appellate court holdings, the court below properly ordered the use of compensatory programs and other relief to remedy the vestiges of the unconstitutional *de jure* segregated system in St. Louis.[23]

---

[22] *Accord*, *Swann*, 402 U.S. at 15. This Court has recognized the same principle in other types of cases involving equitable relief. *E.g.*, *Ford Motor Co.*, 405 U.S. at 573 n.8 (explaining that equitable decrees in antitrust cases should seek to "*cure the ill effects* of the illegal conduct" and are not limited to "restoration of the *status quo ante*") (emphasis in original).

[23] *See, e.g.*, *Arthur v. Nyquist*, 712 F.2d 809 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3756 (1984); *Berry v. School Dist. of Benton Harbor*, 698 F.2d 813 (6th Cir.), *cert. denied*, 104 S. Ct. 236 (1983); *United States v. Texas Educ. Agency*, 679 F.2d 1104 (5th Cir. 1982); *Evans v. Buchanan*, 582 F.2d 750 (3d Cir. 1978) (*en banc*),

The reliance of Petitioners and of the United States on this Court's decision in *Dayton Board of Education v. Brinkman*, 433 U.S. 406 (1977) ("*Dayton I*"), to contradict these holdings is misplaced. In *Dayton I*, this Court held that the district court had improperly ordered a system-wide remedy where the violation proven had "included at most a few high schools." *Dayton Board of Education v. Brinkman*, 443 U.S. 526, 540-541 (1979) ("*Dayton II*"). As this Court made clear in *Columbus*, the holding in *Dayton I* is limited to situations where "only a few apparently isolated discriminatory practices had been found," making a systemwide remedy inappropriate. *Columbus*, 443 U.S. at 465-466.[24] In this case, as in *Columbus* and *Milliken II*, the State and the City Board are responsible for systemwide, *de jure* segregation in the City of St. Louis, and the remedy was designed to redress the effect of "[t]he 'condition' offending the constitution." *Milliken II*, 433 U.S. at 282. The ruling in *Dayton I*, where this Court held that it was necessary to define and seek to remedy the incremental effects of specific identifiable constitutional violations, is simply inapplicable.[25] Thus, the findings below met the

---

cert. denied, 446 U.S. 923 (1980); *United States v. Texas*, 447 F.2d 441 (5th Cir. 1971), *cert. denied*, 404 U.S. 1016 (1972); *United States v. Jefferson County Bd. of Educ.*, 380 F.2d 385 (5th Cir.), *cert. denied*, 389 U.S. 840 (1967).

As the Court of Appeals recognized, Petitioners' heavy reliance on *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973), is misplaced. Where, as here, a case involves "a suspect class (race) and an established constitutional violation (a *de jure* school system)," the courts have "repeatedly endorsed compensatory and remedial efforts to overcome educational inadequacies caused by segregated schools, *Rodriguez* notwithstanding." City App. K, p. A-440 n.7.

[24] Unlike the decisions relied upon by the State, this case involves the vestiges of a state-mandated *de jure* segregated school system, not individual "findings of segregative acts" warranting only limited relief. *Compare Brennan v. Armstrong*, 433 U.S. 672 (1977) (cited at State Pet. at 19).

[25] *Dayton I* similarly does not justify remand to the District Court for additional findings. As discussed at p. 12-13, 20-21,

standards set forth in *Dayton II*, *Milliken II* and *Columbus* and, in any event, under well-established legal principles, the adequacy of those findings does not present a question worthy of this Court's review.

3. The City's claim that the courts below have engaged in "judicial taxation," City Pet. at 10, misconstrues the decisions below. The District Court merely stated that, after future hearings, it would consider as a matter of last resort authorizing a property tax increase in St. Louis if proven essential to ensure adequate funds for desegregation, and the court expressly reserved for a later date the question of whether such an order would be necessary. City App. A, p. A-35. In deference to the applicable principles of comity and federalism, the Court of Appeals also made it clear that such an order would be permissible under *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), only "after exploration of every other fiscal alternative." City App. K, p. A-449. Accordingly, there is no present controversy concerning the propriety of such an order, and any ruling by this Court concerning that issue would be purely advisory.[26] The City's challenge to the validity

---

supra, the Court of Appeals reviewed in detail each aspect of the relief ordered and made specific findings concerning the remedies it upheld. Contrary to the argument presented by the United States, there was no impropriety in the appellate court's making such factual findings based upon the trial record. Indeed, the findings made by the Court of Appeals in this case were even more detailed than the appellate court findings relied upon by this Court in upholding the system-wide remedy in *Dayton II*. *Id.*, 443 U.S. at 540-541. The United States' suggestion that the Court summarily vacate the decision below and remand for additional findings is simply unrealistic. Such an order would completely and unnecessarily disrupt the voluntary desegregation plan now in effect and would fatally undermine the Settlement Agreement so carefully negotiated among the parties.

[26] This Court has made it clear that it does not issue advisory opinions on hypothetical questions. *Federal Communications Comm'n v. Pacifica Found.*, 438 U.S. 726, 735 (1978). *Accord, e.g., Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956) (noting that this Court "reviews judgments, not statements in opinions").

of a hypothetical future order which may or may not require the raising of additional tax revenues does not warrant review by this Court.[27]

The only action below relating to tax revenues was the decision by the District Court ordering the maintenance of the current St. Louis school tax rate and deferring a scheduled property tax rate reduction to the extent "necessary to fund [the] City Board's constitutional obligation." City App. A, p. A-4. This order was based on testimony that the City Board would be unable to maintain its regular educational programs and to comply with its desegregation responsibilities if the tax rate were reduced. *See* p. 11-12, *supra*. Although the Court of Appeals recognized that the record in fact reflected such financial

---

[27] The City's contention that federal courts may never order taxes to be levied or spent contradicts squarely the previous holdings of this Court. In *Virginia v. West Virginia*, 246 U.S. 565, 591 (1918), this Court held that the existence of the judicial power to resolve a controversy necessarily implies the existence of the power to "enforce the results of its exertion," including, if necessary, a writ of mandamus directing the legislative body to enact and levy a tax to satisfy the judgment. Numerous other decisions of this Court, including *Griffin*, have recognized the federal court's authority to order municipalities to raise and expend tax revenues where necessary to vindicate constitutional rights or fulfill contractual obligations. *See Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 681 (1978) (acknowledging long line of cases in which this Court has "vigorously enforced the Contract Clause against municipalities—an enforcement effort which included . . . ordering that taxes be levied and collected to discharge federal-court judgments once a constitutional infraction was found"). *Accord, e.g., United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977); *Graham v. Folsom*, 200 U.S. 248 (1906); *Supervisors v. Durant*, 76 U.S. 415 (1869); *Von Hoffman v. City of Quincy*, 71 U.S. 535 (1867). This Court's recognition of the power of federal courts to remedy constitutional violations, including the ultimate power to raise taxes if necessary, is in accord with long-established common law doctrines. *See* cases cited at City App. K, p. A-449-454. Furthermore, the City's reliance on the doctrine of separation of powers is misplaced. As this Court has held, separation of powers "has no applicability to the federal judiciary's relationship to the States." *Elrod v. Burns*, 427 U.S. 347, 352 (1976) (Brennan, J., announcing the judgment of the Court). *Accord, Virginia v. West Virginia, supra*, 246 U.S. at 591.

problems, it held that the District Court should have made an explicit finding that all other fiscal alternatives were insufficient before deferring the rollback. City App. K, p. A-455. Accordingly, the appellate court ruled that the District Court must allow the rollback to take effect in 1984-85 unless such findings are made. *Id.*

Petitioners nevertheless complain because the appellate court in February did not reverse the rollback suspension retroactively to the beginning of the 1983-84 school year. The Court of Appeals, however, was simply applying this Court's consistent holdings that once any legal error has been corrected on appeal, interim measures are permissible in order to avoid disruption even where not consistent with the proper legal result reached on appeal.[28] This principle has been applied by this Court to school desegregation cases as well, including the decision in *Dayton I* relied upon by Petitioners. In that case, even though this Court held that the evidence and findings were inadequate to support the system-wide remedy ordered by the lower courts, the Court approved the continuation of the remedy for the pending and next succeeding school years. *Id.* at 421. Indeed, the appellate court here took a more conservative approach than in *Dayton*, since it held that the deferral may continue only for the remainder of the 1983-84 school year and must

---

[28] *See, e.g., Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 88 (1982) (staying judgment invalidating Bankruptcy Reform Act in order to avoid "impairing the interim administration of the bankruptcy laws"); *Lemon v. Kurtzman*, 411 U.S. 192, 194 (1973) (holding that district court could permit state to reimburse non-public school for educational services performed prior to decision declaring such payments unconstitutional); *Upham v. Seamon*, 456 U.S. 37, 44 (1982) (permitting use of erroneously ordered reapportionment plan as "interim plan" for next succeeding election); *Mahan v. Howell*, 410 U.S. 315, 332-333 (1973) (upholding interim remedy by district court in voting rights case using multi-member districts which would not have been appropriate as final relief); *Allen v. State Bd. of Elections*, 393 U.S. 544, 571-572 (1969) (refusing to apply voting rights decision retroactively to set aside previous elections conducted in violation of applicable law).

end before the school year beginning in September, 1984, unless specific findings justifying its continuation are made.

Thus, the Court of Appeals announced no new principle concerning federal court authority over state and local taxation. Instead, in accordance with its previously expressed concern about avoiding disruption of the desegregation plan in mid-year, it simply left the rollback deferral in place until the end of the school year in June 1984 in order to avoid such disruption.[29] The Court of Appeals' treatment of the rollback deferral issue under the particular circumstances of this case accords with the standards established by this Court and raises no issue warranting review.[30]

---

[29] *See Liddell v. State of Missouri*, 717 F.2d 1180, 1183 (8th Cir. 1983) (*"Liddell VI"*) (explaining that issuance of a stay after school year had begun would "necessitate reassigning students and teachers . . . and revising administrative decisions concerning budgeting, orientation and hiring," thereby disrupting "the lives of thousands of students and teachers"). *Accord*, App. B to Supplemental Brief of City Petitioners at A-3 (supplemental opinion of Court of Appeals of March 5, 1984) (describing the "consistent view" of the court "that we will avoid disruption during the school year whenever possible").

[30] In addition to failing to demonstrate that the decision below concerning the tax and rollback issues departs from the decisions of this Court, the City has failed to show any conflict among the circuits. *Plaquemines Parish School Bd. v. United States*, 415 F.2d 817 (5th Cir. 1969) (cited in City Pet. at 15, 23), did not even involve a tax levy. Instead, it concerned an order requiring a school district to seek funds under federal programs, and it was premised on the recognition that adequate funding for desegregation would be forthcoming pursuant to an injunction against the County Commission, which was upheld by the appellate court. *Id.* at 834. In *Evans v. Buchanan*, 582 F.2d 750, 780 (3d Cir. 1978), *cert. denied*, 446 U.S. 923 (1980) (cited in City Pet. at 11, 17, 23, 25, 29), the Third Circuit specifically endorsed the principle of *Griffin v. County School Bd., supra*, that a court has authority to enter a tax order where necessary to protect a desegregation decree, such as where "substantially insufficient funds" are provided to operate a school system. Like the Eighth Circuit below, it remanded to the district

4. Petitioner Association claims that the courts below erred in approving the Settlement Agreement because the agreement allegedly favors the interests of black students who choose to transfer to county schools over the interests of those who choose to remain in City schools. Petitioner further contends that the District Court's alleged failure to give sufficient consideration to Petitioner's objections to the plan amounts to a denial of due process. These arguments were thoroughly addressed by the Eighth Circuit and do not raise any issues worthy of this Court's attention.

Petitioner's arguments totally ignore the fact that the Settlement Agreement provides for a wholly voluntary plan. The option of transferring to suburban districts is offered on an equal basis to *all* black students attending majority-black City schools. *See* Settlement Agreement [H(2217)83] at II(B), City App. C, p. A-69-70. The Settlement Agreement also contains substantial remedial and compensatory relief designed to improve conditions for those students who choose to remain in City schools—relief that was ordered below in order to further remedy established constitutional violations. *See* p. 9, 12, 19-23, *supra*.[31]

Thus, the Eighth Circuit concluded that there was "no evidence in the record to support the claim that the interests of students attending all-black schools are being slighted," since they will now be able either to "attend their neighborhood school, attended an integrated school in the city or county, or attend a magnet school." City

---

court because it had not made factual findings sufficient to justify contravening the tax rate approved by the legislature.

[31] Petitioner's reliance on *In re General Motors Corp. Engine Interchange Litigation*, 594 F.2d 1106 (7th Cir.), *cert. denied*, 444 U.S. 870 (1979), is thus misplaced. That case involved a proposed settlement in which plaintiff class members who declined to accept a cash settlement would have had their federal claims dismissed even though they received no relief in return. In contrast, in this case, substantial relief is provided to students who do not elect to transfer out of City schools.

App. K, p. A-460. The Eighth Circuit similarly rejected Petitioner's argument that due process was denied because the District Court allegedly failed to respond in detail to Petitioner's objections to the settlement plan. After careful review, the court held that the District Court's lengthy opinion "reveals that it engaged in a reasoned examination of objections raised by class members concerning whether the plan is fair, reasonable and adequate." City App. K, p. A-461 (*citing Liddell v. Board of Education, supra*, 567 F. Supp. at 1042-1047). Petitioner Association has failed to demonstrate that its attempt to relitigate these holdings warrants review by this Court.

5. Finally, the State claims that the decision below "wrongfully interferes with decisions about State programs" and impedes the interest of State authorities in "managing their own affairs," because it involves the expenditure of State funds which could be used for other purposes. State Pet. at 28, 30. Not surprisingly, the State can point to no decision of this Court or a federal court of appeals which supports its assertion that such budgetary or management factors are more important than the constitutional rights of thousands of schoolchildren.

The State's argument necessarily assumes that there are some federal constitutional violations which, for budgetary reasons, the courts are powerless to remedy. That is not and cannot be the law. As this Court has recognized, "it is obvious that vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny them than to afford them." *Watson v. City of Memphis*, 373 U.S. 526, 537 (1963).[32] In *Milliken II*, this Court rejected vir-

---

[32] *Accord, e.g., Welsch v. Likens*, 550 F.2d 1122, 1132 (8th Cir. 1977) (holding that the "obligation [to comply with constitutional standards] may not be permitted to yield to financial considerations"). Like the State of Michigan in *Milliken II*, the State in this case is free to determine how to finance its responsibilities under the order below. For example, the State could utilize some of its

tually the identical argument raised by the State here: it explained that a "federal court judgment enforcing the express prohibitions on unlawful State conduct" under the Fourteenth Amendment "does not jeopardize the integrity of the structure or functions of state and local government," regardless of its costs. *Milliken II*, 433 U.S. at 291.

The total lack of merit in the State's argument that it should not be ordered to fund the remedy here becomes even clearer when put into historical perspective. Until the middle of the nineteenth century, the State of Missouri outlawed the teaching of black children altogether. For almost one hundred years thereafter, the State required that blacks be educated only in segregated schools. *See Adams v. United States*, *supra*, 620 F.2d at 1280-81. Even after *Brown v. Board of Education*, 347 U.S. 483 (1954), the State took no effective action to dismantle the racially dual system in the City of St. Louis. *See* City App. K at p. A-408c. Even today, thirty years later, approximately half the City's students remain in one-race schools. The State cannot now claim that it has no responsibility to remedy these conditions. *Compare Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958). Nor can it avoid its responsibility simply by complaining about the costs. The State's unsupported attempt to resurrect such long-discredited arguments fails to present an issue worthy of review by this Court.

CONCLUSION

For the foregoing reasons, the Petitions for a Writ of Certiorari should be denied.

$2.4 billion of general, unearmarked funds for fiscal year 1984 or, as Governor Bond proposed, raise new tax revenues. *See* May 17 Tr. at 22 (testimony of State Budget Director Perry McGinnis); *St. Louis Post Dispatch*, Sept. 14, 1983, at 1. *See also Yaris v. Special School Dist.*, 558 F. Supp. 545, 559 n.7 (E.D. Mo. 1983), *aff'd*, No. 83-1865 (8th Cir. Feb. 24, 1984) (noting that "only one state in the country appropriates less funds than the State of Missouri for its educational system").

Respectfully submitted,

THOMAS I. ATKINS
NAACP
186 Remsen St.
Brooklyn, New York 11201
(212) 858-0800

WILLIAM L. TAYLOR
CENTER FOR NATIONAL POLICY REVIEW
Catholic University Law School
Law School Bldg., N.E.
Washington, D.C. 20064
(202) 832-8525

MICHAEL J. HOARE
CHACKES & HOARE
314 N. Broadway, Suite 1010
St. Louis, Missouri 63102
(314) 241-7961
Attorneys for Caldwell Plaintiffs

WILLIAM P. RUSSELL
408 Olive Street, Suite 715
St. Louis, Missouri 63102
(314) 621-4525
Attorney for Liddell Plaintiffs

DONALD J. STOHR
JAMES W. ERWIN
THOMPSON & MITCHELL
One Mercantile Center
Suite 3400
St. Louis, Missouri 63101
(314) 231-7676
Attorneys for Parkway School District

HENRY D. MENGHINI
ROBERT J. KREHBIEL
EVANS & DIXON
314 North Broadway, 16th Floor
St. Louis, Missouri 63102
(314) 621-7755
Attorneys for Affton and Lindbergh School Districts

* Counsel of Record

JOHN H. LASHLY
PAUL B. RAVA
KENNETH C. BROSTRON
LASHLY, CARUTHERS, BAER & HAMEL
714 Locust Street
St. Louis, Missouri 63101
(314) 621-2938

DAVID S. TATEL
ALLEN R. SNYDER *
ELLIOT M. MINCBERG
SUE A. KAPLAN
HOGAN & HARTSON
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4500
Attorneys for the Board of Education of the City of St. Louis, Missouri

JOHN GIANOULAKIS
KOHN, SHANDS, ELBERT, GIANOULAKIS & GILJUM
411 North Seventh Street
St. Louis, Missouri 63101
(314) 241-3963
Attorneys for Ritenour and Pattonville School Districts

GEORGE J. BUDE
ZIERCHER, HOCKER, HUMAN, MICHENFELDER & JONES
130 South Bemiston, Suite 405
St. Louis, Missouri 63105
(314) 727-5822
Attorneys for Hancock Place, Brentwood, Clayton, and Jennings School Districts

DAROLD E. CROTZER, JR.
STEINBERG & CROTZER
230 South Bemiston, Suite 1010
St. Louis, Missouri 63105
(314) 727-9400
Attorneys for Normandy School District

ROBERT P. BAINE, JR.
BAINE & EDWARDS
225 South Meramec Avenue
St. Louis, Missouri 63105
(314) 862-5900
Attorneys for Hazelwood School District

BERTRAM W. TREMAYNE, JR.
TREMAYNE, LAY, CARR & BAUER
120 South Central, Suite 540
St. Louis, Missouri 63105
(314) 863-4151
Attorneys for Kirkwood and University City School Districts

EDWARD E. MURPHY, JR.
GARRY SELTZER
MURPHY & ASSOCIATES, P.C.
120 South Central, Suite 938
St. Louis, Missouri 63105
(314) 725-5440
Attorneys for Riverview Gardens School District

ROBERT G. MCCLINTOCK
705 Olive Street, Room 722
St. Louis, Missouri 63101
(314) 241-5673
Attorney for Ladue School District

RICHARD H. ULRICH
SHIFRIN, TREIMAN, BARKEN, DEMPSEY & ULRICH
11 South Meramec, Suite 1350
St. Louis, Missouri 63105
(314) 862-3232
Attorneys for Maplewood-Richmond Heights School District

ALBERT M. SCHLUETER
KENNETH V. BYRNE
SCHLUETER & BYRNE
11 South Meramec, Suite 1400
St. Louis, Missouri 63105
(314) 727-0777
Attorneys for Valley Park School District

FRANK SUSMAN
NORMAN C. PARKER
SUSMAN, SCHERMER, RIMMEL & PARKER
7711 Carondelet, 10th Floor
St. Louis, Missouri 63105
(314) 725-7300
Attorneys for Ferguson-Florissant School District

BRUCE S. FELDACKER, P.C.
705 Olive Street, Suite 500
St. Louis, Missouri 63101
(314) 231-2970
Attorney for St. Louis Teachers Union, Local 420, American Federation of Teachers

Office - Supreme Court, U S
FILED
AUG 2 1984
ALEXANDER L. STEVAS
CLERK

Nos. 83-1721, 83-1386, 83-1838

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF MISSOURI, et al.,
Petitioners,

vs.

CRATON LIDDELL, et al.,

and

EARLINE CALDWELL, et al.,

and

JANICE ADAMS, et al.,

and

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,

and

THE CITY OF ST. LOUIS, MISSOURI,

and

THE UNITED STATES OF AMERICA,
Respondents.

SUPPLEMENTAL BRIEF FOR LIDDELL RESPONDENTS IN OPPOSITION

JOSEPH S. McDUFFIE and
WILLIAM P. RUSSELL*
408 Olive Street, Suite 206
St. Louis, Missouri 63102
(314) 621-4525
Attorneys for Liddell Respondents

*Counsel of Record

BEST AVAILABLE COPY

TABLE OF CONTENTS

TABLE OF CONTENTS. i

TABLE OF AUTHORITIES. . . . . ii.iii

TABLE OF APPENDIXES. . . . . iv.

OPINIONS BELOW. . . . . 2.

JURISDICITION. . . . . 2.

STATEMENT OF THE CASE. 2-11

QUESTIONS PRESENTED. 12-15

DISCUSSION. 16-31

CONCLUSIONS. 32

TABLE OF AUTHORITIES

CASES CITED:

LiddellI, Liddell vs. Caldwell, 546 F.2d. 768 (1976), cert. denied, 433 U.S. 914 (1976). . .

Reversing

LIddell II, Liddell vs. Caldwell, 553 F.2d.557 (1977), Procedural orders. . . . . .

Liddell vs. Bd. of Ed.m 469 F.Supp. 1304 (1974); Reversed by Adams vs. U.S., 620 F.2d. 1277, cert. denied, 449 U.S. 826 (1980). . . . . .

Liddell vs. Bd. of Ed., 491 F.Supp. 351 (1980), Affirmed. . . . . .

Liddell III, Liddell vs. Bd. of Ed., 667 F.2d 643, cert. denied, 454 U.S. 1091 (1981). . . . .

Liddell IV, Liddell vs. Bd. of Ed., (District Court), 567 F.Supp. 1037 (1983)

Liddell VI, vs. Missouri, 717 F.2d. 1180, (1983). .

State ex rel vs. Holmes, 231 S.W.2d., 185, 191, (1950). . . . . .

Morrilton, et al., vs. United States, 606 F.2d. 222, 230, (1979). . . . . .

State vs. Andrae, 116 S.W. 561 ( ). . . . . .

Richardson vs. Dolan, 181 S.W. 2d. 997 (1944). . .

Shelley vs. Kraener, 355 Mo. 814, 198 S.W.2d. 679 (Mo. en banc 1946); reversed 334 U.S. 1, 68 S.Ct. 836, 92 L. Ed. 1161 (1947). . . . .

Jones vs. Alfred H. Mayer Co., 255 F.Supp. 115 (E.D. Mo. 1966); aff'd 379 F.2d. 33 (8th Cir. 1967); reversed 392 U.S. 409, 88 S.Ct. 2186, 20 L. Ed.2d. 1189 (1968). . . . . .

Milliken vs. Bradley I, 418 U.S. 717 (1974). . .

Hills vs. Gautraeux, 425 U.S. 284 (1976). . . . .

Milliken vs. Bradley II, 433 U.S. 267, 280-281 (1977). . . . . .

Hobby vs. Disman, 250 S.W.2d 137, 141 (Mo. (1952).,

Dayton Bd. of Ed. vs. Brinkman, 433 U.S. 406 (1977)

School Dist. of Omaha vs. U.S., 433 U.S. 667 (1977). . . . . .

STATUTES:

28 U.S.C. 1254 (1). . . . . .

14 Amendment U.S. Constitution. . . . . .

Missouri Constitution, Article IX, Sections 1, 2(a), (b). . . . . .

162.571 et. seq., City of St. Louis Metro School District. . . . . .

Chapter 162, R.S.Mo. 1968-Mo School District Statute. . . . . .

TABLE OF APPENDIXES

L.R. App. A - Excerpts from original Petition of Liddell Plaintiffs; Paragraphs 4, 6, 7, 8, 9, 10, 15, 16, 17, 18 (last clause, Pg. 9), 19 and 20.

L.R. App. B - District Court's Order of July 13, 1977, on the Scope of Post Consent Decree hearing.

L.R. App. C - Post Hearing (469 F. Supp.) "Suggested Findings of Fact, etc." "Findings of Fact": Paragraphs 1, 2, 3 and 4 - Accompanying Brief: 1st full Paragraph, Pg. 3.

L.R. App. D - The June 3, 1980 Findings of Fact and Conclusions of Law of the District Court (491 F. Supp.); Facts: Paragraphs 5, 12, 14 and 17 - Law: Paragraph 5, Pg. 9 and Paragraph 6, Pg. 10 and Paragraph 7, Pg. 11.

L.R. App. E - Excerpts - Testimony of Dr. William Kottmeyer on Neighborhood School Concepts of St. Louis Public Schools; Questions and Answers: Pgs. 8, 9, and 10.

L.R. App. F - The June, 1954 Policy Statement, City School Board adopting Neighborhood Schools; Pgs. 1086, 1087, 1088 of Minutes.

L.R. App. G - Liddell Plaintiffs' Suggested Findings: Pg. 8, Paragraph 28 and concluding on Pg. 9. Conclusions: Pg. 34, Paragraph b. 469 F. Supp. - Findings of Facts: Pgs. 10, 11, 13, 28, 41 and 107.

L.R. App. H - Liddell Plaintiffs' Supplemental Pleadings and Memorandum in Support Thereof: H(1027)82.

L.R. App. I - R.S.Mo. 162.571 et seq. St. Louis City Metropolitan School District.

L.R. App. J - Excerpts from State Defendants' Brief" as Requested by Court "in its letter of May 5, 1980".

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. 83-1721-83-1386-83-1838

STATE OF MISSOURI, ET AL.,

PETITIONERS,

VS.

CRATON LIDDELL, ET AL.,

RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR CRATON LIDDELL, ET AL., IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, was filed February 8, 1984 as slip opinion No. 83-2140. The opinion is reprinted as Appendix A in the separate Appendix of Petitioner's Application. The opinion of the District Court is reported at 567 F.Supp. 1030. It is also reprinted as Appendix B in the separate appendix of Petitioner's Application.

JURISDICTION

The judgment of the Court of Appeals en banc was entered on February 8, 1984. The Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Respondents herein, Craton Liddell, by his next friend, Minnie Liddell; JoAnna Goldsby, by her next friend, Barbara Goldsby; Deborah Yarber, by her next friend, Samuel Yarber; Nathalie Moore, by her next friend, Louise Moore, and Rachelle LeGrand, by her next friend, Lois LeGrand; members of the Con-

cerned Parents, an unincorporated association, filed this suit on behalf of themselves and all other school age children and their parents, who were similarly situated in the City of St. Louis, Missouri - February 18, 1972.

An attempt was made to settle this litigation in 1975 by the filing of a consent decree. This move was resisted by the intervention of the NAACP. This phase of the litigation is set forth in Liddell vs. Caldwell (Liddell I), 546 F.2d. 768 (1976), cert. denied, 433 U.S. 914 (1976). The NAACP representing the Caldwell plaintiffs were permitted to intervene as a class of plaintiffs. The District Court permitted the City of St. Louis and other parent groups to intervene as plaintiff - Intervenors.

Under date of July 13, 1977, the State of Missouri, the State Commissioner of Education and the State Board of Education were joined as defendants by order of Judge James H. Meredith of the District Court.

The District Court ruled in its July 13, 1977

Order that all parties (intervenors and new defendants alike) are bound by the original pleadings the same as if they were original parties. Thus, if there are allegations in the original petition making a complaint against the State of Missouri and its agents School districts then the State of Missouri as a defendant is bound by those pleadings. The State's contention that no claim has been made against it would indicate that the State never read the original petition, or the plaintiff's Supplemental Pleadings. It would appear that a tactical decision "backfired" against the State.

These Respondents (the Liddell Plaintiffs) state that the original petition pleaded a cause of action against the State of Missouri and its agents.1/ The State of Missouri filed in its pleading an admission of proper party, but denied responsibility for segregation in the City of St. Louis school system. The District Court was of the opinion that the Constitutional liability of defendant City Board of Education, et al. had not been determined

or admitted. Therefore, the District Court informed all parties that the schedule hearings would determine the constitutional liability of all defendants, including the State defendants. This was necessary because of three recent Supreme Court decisions, to wit: (all decided in 1977) Dayton Bd. of Ed. vs. Brinkman, 433 U.S. 406 (1977) Milliken vs. Bradley, 433 U.S. 267 (1977) School Dist. of Omaha vs. U.S., 667, (1977).

1/ Respondents alleged in their petition among other (L.R. App. A), "that the laws of Missouri vested the Board of Education of the City of St. Louis with general and supervising control and management of Public schools. . .Plaintiff further state that defendants, the Board of Education of the City of St. Louis and its individual members, the Superintendent and Acting Superintendent of Schools of said Board, and the District Superintendent of the districts within the Metropolitan school district of the City of St. Louis in the exercise of the functions of the state which have been delegated to them by the laws of Missouri, are required to conduct and superintend the business relating to the public schools of the City of St. Louis in a manner consistent with the requirements of the Constitution and laws of the United States, and to implement the legitimate public policy of the State of Missouri to provide, furnish, and make available equal raciallly non-segregated, racially non-discriminatory educational opportunities for all regardless of race, creed natural origin, color or sex, and to eliminate and prohibit segregated or separate schools or school

In deciding to hold a trial on the merits:

the courts said in its July 13, 1977 order:

"In the light of recent Supreme Court cases: Milliken vs. Bradley, No. 76-447, decided June 27, 1977; Dayton Board of Education vs. Brinkman, No. 76-539, decided June 27, 1977; and School District of Omaha v. United States, No. 76-705, decided June 29, 1977, it is necessary for this Court to determine if there has been a constitutional violation by the defendants.

This determination has never been made by the consent decree nor the stipulation of facts, and the stipulation of facts denies any constitutional violation by defendants.

1/ (Footnote continued)

districts on the basis of race, creed, or color; that the said defendants are further obligated to report and recommend to the legislative body of the state or of the city remedies to rid the system of the observed imperfections in the operation of the schools in their district; and that the said defendants are proper parties defendants to this action.

"That defendants and their predecessors in office in the exercise of the delegated educational functions of the State of Missouri have engaged in acts, practices, customs and usages which have had the natural, probable, foreseeable, and actual effect of incorporating into the public schools and the public school system of the metropolitan district of the City of st. Louis, the public and private residential racial segregation and discrimination practices of the State of Missouri and of the City of St. Louis in violation of the right of plaintiffs not to be segregated

All parties are bound by the stipulation of facts and the consent decree. The remedy to be adopted by the Court will depend on the nature and extent of the constitutional violation, if any. These matters willbe considered by the Court at the July 25, 1977, hearing in light of the evidence introduced and the briefs of the parties."

After a 37 day trial over 6 months, the District Court found:

1. That prior to 1954 the constitution of Missouri mandated separate schools for black and white pupils.

2. This provision remained in the constitution until 1976.

3. The State Board of Education has always had constitutional and statutory authority (among other things) to supervise educational instruction.

1/ (Footnote continued)

on the basis of race in public schools and the school districts established and maintained by defendant in the metropolitan school district of the City of St. Louis."

"Plaintiffs further states that for years prior to 1954, the State of Missouri, through its constitution and laws, the customs, policies, and practices of its instrumentalities, including but not limited to, its school districts, mandated and enforced both public and private racial segregation, including, but not limited to, public

4. The State determined Educational Policies.

5. The State of Missouri and the City of St. Louis School District had fulfilled their obligations to creat a unitary school system in

---

1/ (Footnote continued)

school education, the effects of which persist in the affairs of defendants in administering the public school system of the metropolitan district of the City of St. Louis, all of which had and continues to have the purpose and effect of denying equal educational opportunities and equal opportunities based on education, to black citizens and students by compelling the attendance of black students in segregated schools, and which denies to plaintiffs and the class on whose behalf they sue, the equal protection of the laws guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

"That defendants and their predecessors in office since 1954, pursuant to a policy, practice, custom and usage of racial discrimination denying Fourteenth Amendment rights, have by the devices, inter alia, of separate and racially discriminatory curriculum within the schools and school districts, frequent redistricting of school boundaries and school district boundaries, new school locations and construction, the assignment of all children to schools within the metropolitan district of the City of St. Louis, and the assignment of teachers in the school system, have acted affirmatively to create, support, maintain and continue to support and maintain a dual biracial school system in the Metropolitan School District of the City of St. Louis which denies to black children equal education opportunities; and that defendants have failed to

1955 and 1956 by the adoption of the Neighborhood School Policy in the City of St. Louis school system. Liddell v. Board of Education, City of St. Louis, et al., 469 F. Supp. 1304 (E.D. Mo. 1979); See also App. C-State's Suggested Finding of Facts and Conclusions of Law; Adams vs. U.S. 620 F 2d. 1277 (8th Circuit) en banc, cert. denied, 449 U.S. 826 (1980).

1/ (Footnote continued)

fulfill their affirmative duty to establish and maintian unitary public schools."

On appeal, the Court of Appeals reversed the District Court and held that under the circumstances of this case, the District Court erroneously held that the establishment of a neighborhood attendance policy fulfilled the defendants' "affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Adams v. United States, 620, F. 2d., 277 (8th Circuit), 1980, cert. denied, 101 Sup. Ct., 88, 1980.

The Court of Appeals directed that segregation in the elementary and secondary schools in St. Louis must now be eliminated, and instructed the District Court to take necessary steps to bring about an integrated system. The City of St. Louis School Board prepared a plan for desegregating the public schools of the district. However, because of the ratio of black and white students in the system, the plan left 30,000 black students in predominantly black or all black schools in the North St. Louis area of

of the school district.

The District Court and the Eighth Circuit Court of Appeals approved the City Board's plan to desegregate the school system with Paragraphs 12a, 12b, 12c and 12d which specifically addressed the 30,000 black pupils remaining in segregated schools in North St. Louis: 12a being a voluntary plan of transferring students to County schools, 12b merged the vocational educational schools of City and County, 12c called for a mandatory plan of desegregation and 12d called for a study to determine the effects of housing on school desegregation.

Under state law, school districts are delegate agents of the state for the purpose of carrying out the state function of providing a gratutious education for its citizens, ages six to twenty-one.2/

2/ Missouri Constitution Article IX, §(a): "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratutious instruction of all persons in

QUESTIONS PRESENTED

The State of Missouri, in seeking this Court's Writ of Certiorari to the Eighth Circuit Court of Appeals, argues generally:

1. "This case involves an unprecendented order." Pet. P. 10

2. "The remedy is intolerable." Pet. P. 11

2/ (Footnote continued)

this state within ages not in excess of twenty-one years as prescribed by law. Separate schools shall be provided for white and colored children except in cases otherwise provided for by law."

Missouri Constitution Article IX, §2(a): "The supervision of instruction in public schools shall be vested in a state board of education, consisting of eight (8) lay members appointed by the governor, by and with the advice and consent of the senate. : ." and in §2(b) it is provided: "The board shall select and appoint a commissioner of education as its chief administrative officer, who shall be a citizen and resident of the state, and removable at its discretion. . ."

In State ex rel vs. Holmes, 231 S.W. 2d 185, 191 (1950), the Court made these pertinent statements: "Art. IX, Sec 1 of our Constitution says that "the general assembly shall establish and maintain free public schools for the gratutious instruction of all persons in this state within ages not in excess of twenty-one years," but it does not require the General Assembly to divide the state into school districts. The manner of their formation is not regulated by the Constitution.

3. The "quality education and rebuilding program flies in the face of holdings that the Constitution does not guarantee a right to public education at all, much less a right to "develop to the limits of (each student's) ability". . . . or to attend AAA schools." Pet. PP. 11-12

2/ (Footnote continued)

"The fixing of boundaries of school district is a local affair which may be left to the will of the people under a general law providing for the creation of school districts throughout the state." Consolidated School District No. 41 v. Dacus., 189 Okl. 400, 117 P. 2d 508, loc. cit. 510. "No one would contend that the Legislature itself act directly in defining and changing the boundaries of each district in the state, without delegating this to local authorities. . . . . ." State ex rel. School District v. Andrae, 216, Mo. 617, loc. cit. 631, 116 S.W. 561, 564.

"The Legislature has always, as a matter of policy, left to the resident voters the settlement of all questions involving the organization of school districts. The local voters act to determine such questions either through the mode of petitioned elections or by petitions to the appropriate public official or officials clothed by law with the power to annex or detach territory. The resident voters of the particular territory are the delegated agents of the Legislature to administer the enabling leglislation, thereby implementing the leglislative intent to obey the constitutional mandate of insuring the establishment and maintenance of free public schools for the

Footnote continued on page 16

The State then argues specifically:

1. The Order was imposed without proper findings. Pet. P. 12

2. The remedy is unrelated to any provended violation, Pet. P. 16, because it provided for:

a. A Multidistrict Remedy. Pet. P. 16

b. Unauthorized Quality Education and Rebuilding Program. Pet. P. 24

3. The Order wrongfully interfered with decisions about State Programs. Pet. P. 28

At page 16 of the States' Petition for Certiorari, the State proclaims: "There is not dispute over the duty to eliminate the segregation of students within the St. Louis School District. What the States does dispute, and what is at issue here, is the duty to go beyond the district to achieve a racial balance unavailable within the district itself." Continuing on page 17, the State says: "Our position, simply put, is that the federal courts cannot require the State to transport students among districts in order to achieve a racial balance unavailable within the district

where the violation occurred." (Emphasis added).

We would change the emphasized phrase (racial balance) to read "remedy". With some modification of the issue as put by the State, the Liddell Plaintiffs state the question as follows:

Whether this complained of court order calling for additional relief outside the boundaries of the convicted City of St. Louis school district based on the unavailability of that relief within the City district and the voluntary transfer of students between segregated (all black) schools within the convicted City School District and predominantly white suburban school districts, said transfers to be paid for by the convicted State of Missouri as a primary Constitutional wrongdoer is supported on the record (including the decisions and judgments of the lower federal courts) and therefore ought not to be further reviewed by this Court.

DISCUSSION

The complained of Court order calling for Additional Relief Outside the Boundaries of the Convicted City of St. Louis School District Based on the Unavailability of that Relief within the City District and the Voluntary Transfer of Students between Segregated (All Black) schools within the Convicted City School District and Predominantly White Suburban School Districts,

---

2/ (Footnote continued)

gratutious instruction of all persons in this state within ages not in excess of twenty-one years. People v. Deatherage, 401 Ill. 25, 81 N.E.2d. 581."

"We hold that S.B. 307 is not an illegal delegation of legislative power within the meaning of Art. II of the Constitution. The county boards of education who devise the plans for reorganization, the State Board of Education a constitutional body who must approve the plans and the voters of the district are delegated agents of the Legislature to administer this act. This act is not such an exclusive legislative function as may not be delegated to the State Board of Education county boards of education and the voters of the proposed district. Wheeler School District v. Hawley, supra; Gardner v. Ginther, supra; School District v. Callahan, supra. "This is not deemed or considered a prohibited delegation of legislative powers." State ex rel. School District v. Andrae, supra, 216 Mo. loc. cit. 630, 116 S.W. loc. cit. 564."

said transfers to be paid for by the convicted State of Missouri as a primary constitutional wrongdoer, is supported on the record (including the decisions and Judgments of the lower Federal Courts) and therefore ought not to be further reveiwed by this Court.

The Liddell plaintiffs submit that the record, Judgments and decisions of the lower federal courts in this action support the relief approved against the State by the Eighth Circuit Court of Appeals and no further review by this Court is required. In support thereof, the Liddell plaintiffs state as follows:

1. The findings and conclusions of the District Court are supported by the original pleadings and the evidence, and are not contested by the State. Liddell, et al., vs. St. Louis Bd. of Education etc., 491 F. Supp. 454 (1980). See App. A- Original Petition; Appendix E, Testimony of Dr. Kottmeyer and App. G- original District Court findings on neighborhood schools; and 1st Suggested Findings and Conclusions on

Restrictive Covenants.

2. The Findings, Conclusions, and Judgments of the District Court have been consistently confirmed by the Eighth Circuit Court of Appeals. Liddell III, 667 F. 2d. 643 (8th 1981), cert. denied, 454 U.S. 1091 (1982) and Liddell IV, 693 F. 2d. 721 (1981) and Liddell V, 677 F. 2d. (1982) cert. denied, 103 Supreme Court, 172 (1982).

3. The United States Supreme Court has refused certiorari on the question of relief and funding of that relief as presented by the State on at least two prior occasions. Mo. vs. Liddell, 454 U.S. 1091 (1980); Mo. vs. Liddell, 103 S. Ct. 172 (1982).

The Liddell plaintiffs submit that this settlement agreement is based on their supplemental pleadings H(1027)82 for additional relief, by which they adopt all favorable findings, conclusions, opinions and judgments of the District Court and Court of Appeals, and therefore no further review is required. See APP. H-Liddell Plaintiff Supp. Pleadings H(1027)82.

These plaintiffs acknowledge that the Supreme Court has the authority to correct basic errors in the application of federal constitutional law and the proclamation of the law of the case doctrine is not a barrier to this court. We do not believe there is error or injustice in holding that the State of Missouri is a primary constitutional wrondoer and therefore amenable to interdistrict relief under the doctrine of Hills vs. Gautreaux, 425 U.S. 284 (1976).

The State of Missouri and those parties aligned with it err when they ignore the original pleadings and the findings and conclusions of the District Court in 491 F. Supp. 454 (1980) even though they do not contest those findings. The District Court in 1979, after the first hearing, erroneously held in 469 F. Supp., "that resort by the City Board to a neighborhood school policy after the decision in Brown, had eliminated segregation in the City schools, "Liddell vs. Bd. of Education, 469 F. Supp. 1304 (1979); Pet. A2 However, the above quotation is consistent with

the District Court's finding that the St. Louis City Board adopted the neighborhood school policy of student assignment, at least in theory.

The Eighth Circuit, en banc, reversed and held that the neighborhood school policy had little or no effect on pre-Brown segregation or the dual school system in the City of St. Louis; and based how the neighborhoods had been constructed, the policy would reinforce segregated schools, rather than eliminate them. Adams vs. U.S., 620 F. 2d. 1277, 1287, 1291, (1980).

Further, the State in its argument ignores the illegal judicial State policy enforced by defendant State of Missouri and its officers that made the illegal neighborhoods possible. These policies included the enforcement of illegal racial restricted covenants made unenforceable by this Court in Shelley vs. Kraemer, and made illegal by this Court in Jones vs. Mayer. See Fourteenth Amendment to the U.S. Constitution, Shelley vs. Kraemer, 68 Sup. Ct. 836 (1947); Jones vs. Mayer, 88 Sup. Ct. 2186 (1968). See also Richardson vs. Dolan, 181 S.W.

2d. 997 (1944) and cases cited therein.

The State further ignores prior approval of the so-called 12(a) voluntary plan which included suburban school district. That 12(a) plan is a part of the same District Court Judgment that is responsible for this broadened voluntary settlement agreement which was initiated in lieu of the madatory paragraph 12(c) of the Judgment. Liddell vs. Board of Education, 491 F. Supp. 351 (1980), affirmed by the Eighth Circuit Court of Appeals at 667 F. 2d. 643 (1981), cert. denied by this Court at 454 U.S. 1081, 1091 (1982).

In the State's petition for a writ where certiorari was denied in 454 U.S. 1081 the State expressly argued:

> "V. The District Court exceeded its Authrity and Violated Due Process in Paragraph 12(c) of its May 21, 1980 Order in which it Required the Submission of". . .a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation

in the City of St. Louis and St. Louis COunty

"Because, to date, this Litigation has not been Interdistrict in Scope and as a Result no Evidence has been Introduced Which Would even Remotely Call for Submission of Such a Plan."

This Court denied certiorari to the Eighth Circuit Appeals Court. The State had argued the distinctions in the application of Hills vs. Gautreaux and Milliken vs. Bradley (I) cases on interdistrict remedies, and the affirmative duty requirement of Green in State of Mo. vs. Liddell, et al., 103 S. Ct. 172 (1982).

Further, the State's current application for a Writ ignores the fact that this settlement agreement is based on the continuing jurisdiction of the District Court for further relief and on all favorable findings, conclusions, opinions and judgments of the District Court and of the Eighth Circuit Court of Appeals in the original cause of action as expressed in the Liddell Plaintiff's original petition and the Liddell

Plaintiffs' Supplemental Pleadings. See Appendixes A and H.

We submit that the State's erroneous perception of the whole lawsuit is expressed in the following quotation from page 6 of its Petition:

> "Rather, the Court undertook only to decide "Whether (the) proposed Settlement Plan is fair, reasonable, and adequate for the resolution of the 12(c) interdistrict phase of the case." Pet. App. 103a

The above quotation from the State's Petition is a part of the opening sentence of the District Court's Memorandum opinion and is misquoted out of context to support the State's cause. The District Court at page 108 of its opinion states elements of its considerations for satisfying the requirements of Federal Rule of Civil Procedure 23(d). Pet. App. B (108a).

These plaintiffs disagree with the District Court's decission of this Agreement as the settlement of an independent lawsuit to determine the liability of all defendants, including the State of Missouri.

These plaintiffs would not and do not relitigate the liability of the State defendants but would seek to determine the degree of culpability of the suburban school districts as they participated in or enforced the segregation laws of the State of Missouri. Further, we submit that any remedial determination does not require the relitigation of the liability of the City of St. Louis District or the State of Missouri. Their liability is fixed by the District Court and the Eighth Circuit Court of Appeals and this Court's denial of Certiorari. Further, these plaintiffs submit that the whole record supports their position that this settlement agreement is designed to eradicate the vestiges of a state mandated racially dual educational systems and establish a unitary system in the statutory St. Louis metropolitan school district. L.R. App. I

It should be noted that in Missouri, public education is made the responsibility of the State legislative authority- the General Assembly, and all persons or bodies exercising any of the

public educations authority do so as delegate agents of the State of Missouri. These include school districts and district constituents, even when voting on matters that may be called local by the State. Holmes, supra.

The Missouri State Constitution makes public school education the responsibility of the state general assembly. Within the realm of legal delegation of power, the legislature delegates certain of its authority to school districts to administer those facets of the education program or machinery that may vary from district to district and therefore need local flavoring; such as teacher employment, student assignments, school boundaries, building construction and maintenance, extracurricula programs, public use of buildings, etc.

The creation of every school district in suburbia, and the State of Missouri, was done pursuant to state legislation in Chapter 162 R.S. Mo. 1968.

The State of Missouri argues in its petition

for a Writ on page 26: "This Court has held on several occasions that students have no right to public education at all." (citations omitted) "Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected." These abstract statements are misleading and demonstrate the callous approach that Missouri takes to the equal protection of the law under the Fourteenth Amendment to the U.S. Constitution. It is elementary that education is a power reserved to the states and they (the states) may or may not afford public education. But, if the State does afford public education, it cannot discriminate based on race contrary to the Fourteenth Amendment, or laws enacted pursuant thereto.

On page 28, note 26 of the Petition, the State of Missouri makes an unbelievable statement: "While the State is willing to compensate for any deficiencies caused by its prior policies, there has been no showing that students now in

"non-integrated schools" have been put at an educational disadvantage because of the earlier state law."

The State of Missouri does not have clean hands. Every current non-integrated school was non-integrated in 1954 by state legislative mandate, or judicially made possible by the enforcement of racial restrive covenant protecting white neighborhoods from blacks renting or buying therein. See and compare also the State's Suggested Findings of Facts which were adopted verbatim by the District Court in its findings of facts. App. C and App. G.

The State argues that the State of Missouri cannot be derivatively liable as the governmental principal of the delegate agents school districts in their constitutional conduct toward the plaintiff class. This is not our contention.

Our contention is that the school districts derive their constitutional viability and liability from their status as delegate agents of the State of Missouri which has been found judicially to

be a constitutional (liable) wrongdoer for creating, mandating and maintaining a racially dual school system.

See Milliken vs. Bradley I where the U.S. Supreme Ct. rejected derivative liability of the state emanating from the district, the creature of the State.

We propose derivative liability of the district (the creature) emanating from the State, the creator and principal of the district, the delegate agent.

The State of Missouri participated very vigorously in the liability hearings. The State cross-examined witnesses and filed post-hearing suggested findings of Facts, Conclusions of law, and Order. It appears that it was the State's suggested findings of facts that partially influenced the District Court in making its findings of facts in 469 F. Supp. (Compare L.R. App. C with 469 F. Supp. l.c. Slip Opinion Pg. 11.)

Later, the State called witnesses in its behalf, filed other pleadings and fully partici-

pated, but never read the original Complaint or the Supplemental Complaint of the Liddell plaintiffs.

The State of Missouri was not adversely affected by the scheduled July 25, 1877 hearing as it was continued by the District Court to October, so that the State of Missouri could get ready for trial. See Slip Opinion, Pg. 7: "Findings of Facts" where it is stated:

"By order of July 14, 1977, the trial date was postponed to October 17, 1977, in order to permit the State defendants to prepare for trial."

Further, it is difficult to understand the sincerity of the State's and the City's position on the authority of the District Court to enter orders affecting the school district's tax levy, especially, in light of the fact that the State of Missouri was the first to suggest that the District Court should issue an order requiring the St. Louis City School District to increase its levy to cover its share of the desegregation costs. See Paragraph 7 of the State's Conclusions, Pre-Hearing Brief of 469 F. Supp.

The Association seems to argue that black children can not learn effectively in a school of all black students. We disagree, providing that the City Board does not isolate the all black schools from the remainder of the system thereby destroying the unitary school system. The physical facilities, the curriculum programs, and the dedication of the teachers and administrators along with the reducation of classroom sizes to a manageable level, motivated students and parents and discipline can produce a learning atmosphere throughout the system regardless of which race is in the majority. This is what is sought for the children in North St. Louis, and for the entire school system.

It is important to point out that these past pleadings and the evidence previously adduced are not included here for purposes of relitigation of issues already decided favorably to these plaintiffs; but to demonstrate that the State of Missouri had acknowledge of the claims made against it; that it had an opportunity to (and

did) participate fully in the proceedings where the State of Missouri was found to be a constitutional wrongdoer along with the City of St. Louis School District; that the State (when it chose to do so) called witnesses in its behalf at trial and deposition; that the State was at all times ably represented by very competent counsel, and is not the victim of a denial of due process.

CONCLUSION

The Liddell Plaintiffs respectfully submit that for the combined reasons stated in this Supplemental Response and in the joint Response, of the Proponents St. Louis Board of Education, the Liddell and Caldwell plaintiffs, the Application by defendant State of Missouri for the Writ of Certiorari to the Eighth Circuit Court of Appeals should be denied as no further review is necessary.

Respectfully submitted,

JOSEPH S. McDUFFIE

and

*WILLIAM P. RUSSELL
Attorneys for Defendants
408 Olive, Suite 206
St. Louis, Missouri 63102
(314) 621-4525

*Counsel of Record
July 31, 1984

Office-Supreme Court, U.S.
FILED
SEP 18 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT, etc., et al.,
Petitioners,

vs.

CRATON LIDDELL, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONERS

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, MO 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
Associate City Counselor
EDWARD J. HANLON,
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361
Attorneys for Petitioners

*Counsel of Record

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTION PRESENTED

1. Whether the holding of the court of appeals that the remedial powers of federal courts include the power to order tax increases and bond issues, after certain preliminary inquiries concerning necessity, presents a question warranting review on certiorari, even though ongoing tax proceedings pursuant to the mandate of the court of appeals are not yet complete?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	iii
Table of Authorities	iii
Statement of the Case	1
Argument	3
Conclusion	7

TABLE OF AUTHORITIES

Cases:

Liddell v. State of Missouri, 731 F.2d 1294 (8th Cir. 1984) (en banc)	4
Pittsburgh v. Alco Parking Corp., 417 U.S. 369 (1974)	6
Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974)	5
Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)	6
Virginia v. West Virginia, 246 U.S. 565 (1918)	4
Whitcomb v. Chavis, 403 U.S. 124 (1971)	6

Statutes:

Mo. Rev. Stat. §164.013	5

No. 83-1386

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

HON. RONALD A. LEGGETT, etc., et al.,
Petitioners,

vs.

CRATON LIDDELL, et al.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF FOR PETITIONERS

STATEMENT OF THE CASE

Following remand by the court of appeals, the district court has undertaken energetically to supervise the substantial appropriations and taxation process thrust upon it by the opinion of the court of appeals. A budget review committee has been appointed. See Order H(2945)84,[1] filed March 8, 1984. Reports have been filed by that committee and by its chairman. See Budget Review Committee Report on Proposed 1984-85 Settlement Plan Budgets, H(3114)84, filed May 21, 1984; Budget Review Committee Chairperson's Report on the Amount of a Proposed Bond Issue, H(3214)84, filed July 11, 1984; Budget

[1] These references are to district court docket entry numbers.

Review Committee Report and Chairperson's Recommendations on City Board's Alternatives and Sources for Funding the Settlement Plan, H(3239)84, filed July 16, 1984. The Board of Education of the City of St. Louis ("St. Louis School Board") has urged the district court to impose a $2.33/$100 tax increase. See City Board's Motion for Order Approving Budget and Establishing Adequate Funding, H(3192)84, filed June 29, 1984. The chairman of the district court's budget review committee, in a specific report on the financial needs of the Board of Education of the City of St. Louis, has recommended a school tax increase of $1.70/$100 in the City of St. Louis. See Budget Review Committee Report and Chairperson's Recommendations on . . . Sources for Funding, H(3239)84, supra at 8-9, 11.

At the present time, the district court has reduced substantially the sums demanded by the St. Louis School Board to implement the settlement in 1984-85 (from over $100,000,000 to approximately $50,000,000, exclusive of capital improvements and student transfer payments). See Order H(3220)84, filed July 11, 1984. A magistrate has found that the School Board lacks sufficient funds to pay for its settlement programs, but recommended that the district court refrain from ordering a school property tax increase for the present, pending exhaustion of certain other alternatives. See Report and Recommendation of United States Magistrate, H(3331)84, filed August 15, 1984. However, the magistrate's recommendation (and, indeed, the district court's budget reductions in general) have been sharply attacked by the St. Louis School Board, which has also appealed the district court's July orders. See Objections of the Board of Education to Report and Recommendation of the United States Magistrate, H(3346)84, filed August 27, 1984; Notice of Appeal, H(3367)84, filed September 10, 1984. Although another school tax election may occur in November, the motion of the St. Louis School Board seeking a $2.33/$100 property tax increase is still under submission before the district court.

ARGUMENT

I.

The Question Of The Existence Of A Remedial Judicial Power To Tax, As Held By The Court Of Appeals, Is Ripe For Review By This Court.

Respondents[2] contend that the serious and substantial questions presented by the petitioners in No. 83-1386 should be disregarded by this Court, because any ruling by this Court would be "purely advisory," absent an order below actually increasing property taxes. Consolidated Brief of Liddell, et al., at 24. Respondents argue that the injunction against a school tax reduction in 1983 was not an increase. The United States cavalierly dismisses the petition in No. 83-1386 as "premature". Brief for the United States at 34.

Respondents are correct in observing that an additional school tax rate increase[3] has yet to be ordered below. Nevertheless, the question of the existence of a remedial judicial power to tax, expressly decided by the court of appeals, is plainly significant and is ripe for review by this Court. There is nothing hypothetical in this question. The settlement agreement at issue here explictly prescribed funding by "a tax rate increase in the City of St. Louis as shall be ordered by the Court." No. 83-1386 App. A-127. Rejecting arguments similar to those raised here, the court of appeals directly addressed this issue and squarely held that "the district court's broad equitable powers

---

[2] As used herein, this term includes the private plaintiffs below, the intervening teachers union, the United States, and the eighteen school districts who have filed a brief in this Court. Oddly, five of the school districts who joined in the settlement have not opposed the petition in this Court.

[3] Petitioners cannot agree that prevention of a tax decrease is not a tax increase. Respondents' contention to the contrary is specious.

to remedy the evils of segregation include a narrowly defined power to order increases in local tax levies on real estate." *Liddell v. State of Missouri,* 731 F.2d 1294, 1320 (8th Cir. 1984) (en banc). That court also included the power to order bond issues in the remedial powers of the federal courts. *Id.* at 1322; No. 83-1386 App. K, A-448-A-456.

In response to this holding by the court of appeals, the district court is now enmeshed in the complex legislative undertaking of taxation and spending foreseen by petitioners, see Petition at 28-29. The question of what the school tax rate in the City of St. Louis shall be in 1984 has been removed from the control of the people to the control of the district court. The respondents, especially the St. Louis School Board, are in a poor position to contend that the issue of remedial judicial taxation is hypothetical, when they are currently before the district court urging it to increase taxes (and apparently intend to argue in their latest appeal that the district court has erred in not raising taxes sooner). The district court proceedings are the direct result of the holding of the court of appeals that such a power exists.[4] The questions presented in No. 83-1386 are questions of law directly decided in the judgment below; petitioners do not seek review of a "statement", but of an aspect of the judgment below which is having current, significant consequences.

While the district court did in fact effect a tax increase for the 1983-1984 school year, both the court of appeals and respondents here contend that since it was ordered and implemented, the status quo should not be altered. Now, prior to the entry of any order increasing taxes for 1984-1985,

---

[4] Respondents' argument in favor of the existence of the judicial power to tax badly misstates the holding of *Virginia v. West Virginia,* 246 U.S. 565 (1918). See Consolidated Brief of Liddell, et al. at 25 n. 27. The question of the power of a federal court to mandate a tax increase as an original proposition was deliberately and expressly left open by that decision. 246 U.S. at 604-05.

respondents contend that the issue is premature. As respondents note, the St. Louis School Board's financial obligations and its ability to meet those objections must be assessed annually under the order approving the settlement agreement. See Consolidated brief of Liddell, et al., at 14 n. 14. If the St. Louis School Board is unable to fund its share of the plan out of its available resources, as it contended for 1983-1984 and as it now contends for 1984-1985, the district court is authorized to raise property taxes for this purpose. Yet, in the view of respondents, such an order would never be subject to review: before the entry of such an order, review would be premature; afterwards, equity would dictate maintenance of the status quo.

The order enjoining the property tax rollback in St. Louis under Proposition C (Mo. Rev. Stat. §164.013) was entered July 5, 1983. Pursuant to that order, taxes based on this higher tax rate were collected. (Such taxes were by statute due and payable by December 31, 1983.) The court of appeals' decision was entered February 8, 1984. It is now the beginning of the 1984-1985 school year, with no resolution of the 1983-1984 tax issue and a motion pending for a much more drastic order for the 1984-1985 school year.[5] In short, the St. Louis School Board seeks repetition by the district court of the exercise of the power to tax, while attempting to prevent review by this Court of the constitutional predicate for any such order.

That there is a series of decisional steps prior to the actual entry of an order does not necessarily render a case not ripe for adjudication. *Regional Rail Reorganization Act Cases*, 419 U.S.

---

[5] In addition, petitioner Legett is defendant in a number of tax protest actions filed in state court by reason of the district court's July 5, 1983 order. E.g., *Laclede Gas Co. v. Leggett*, Mo. Circuit Ct., St. Louis, No. 844-00093. He has filed a motion in the district court to compel a refund of the tax money at issue by the St. Louis School Board, in light of the School Board's $14,000,000 surplus at the end of its 1983-84 fiscal year. See Motion for Order Compelling Refund of Taxes, H(3238)84, filed July 16, 1984.

102, 138-146 (1974). This Court has frequently addressed important questions directly presented by a lower court's judgment, even though there were changed circumstances which arguably rendered the question moot, so long as the lower court's judgment could be seen as having a current, identifiable impact on the parties, and especially when the question presented on appeal or certiorari was one which would likely renew itself in subsequent proceedings.[6] See *Whitcomb v. Chavis,* 403 U.S. 124 (1971) (constitutionality of multi-member legislative districts addressed, because district court had retained jurisdiction, even though districts had been abolished by legislature in interim); *Pittsburgh v. Alco Parking Corp.,* 417 U.S. 369 (1974) (constitutionality of a tax addressed even though tax repealed during pendency of the case, where decision would affect right to refund of taxes paid under old law); cf. *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974) (possible future economic impact of zoning ordinance restricting number of unrelated persons in house prevented issue of ordinance's constitutionality from becoming moot).

The funding mechanism of the settlement agreement, in particular the authority of the district court to raise property taxes in the City of St. Louis for school purposes, is the key to the plan itself. By its own terms, the plan is contingent upon the district court making available funds sufficient to carry out the plan. The court of appeals has prescribed a course to be follow-

---

[6] Thus, the rather far-fetched suggestion of the United States, brief at 35, that the judgment below should be summarily vacated on the petition in No. 83-1721, is hardly practicable, since the St. Louis School Board and other parties below may once again seek (and, indeed, are currently seeking) tax increases from the district court. Merely vacating the judgment below would needlessly subject the parties to a rerun of proceedings which have already consumed more than a year, without coming any closer to a resolution of the most critical questions in this case: the existence and scope of remedial taxation powers of federal courts.

ed by the district court in seeking to raise taxes, and that course is being pursued. It is thus appropriate that the linchpin of the settlement agreement, the authority of the district court to provide the St. Louis School Board with additional funds by court-ordered taxation, be reviewed at this time. For all that is praiseworty in the settlement, it raises momentous questions concerning the judicial power of the United States, questions which ought to be settled by this Court.

CONCLUSION

The petition for certiorari in No. 83-1386 ought to be granted.

Respectfully submitted,

ANTHONY J. SESTRIC
1015 Locust Street
Suite 1110
St. Louis, MO 63101
(314) 241-8600

JAMES J. WILSON,
City Counselor
*ROBERT H. DIERKER, JR.
Associate City Counselor
EDWARD J. HANLON,
Assistant City Counselor
314 City Hall
St. Louis, Missouri 63103
(314) 622-3361

Attorneys for Petitioners

*Counsel of Record